



# Why and when democracies ban political parties: a classification of democratic state orientations to party bans

Bohdan Bernatskyi<sup>1</sup>

Accepted: 6 March 2024  
© The Author(s) 2024

## Abstract

Defending democracy requires undemocratic steps; one of the most radical is the prohibition of political parties. The functioning of political parties is fundamental to healthy and pluralistic democracies. Thus, their exclusion from the political process raises a severe dilemma for a democratic society, which has to address sufficiently why and when a political competitor can legitimately be kicked out of the political arena. The latter is crucially important because of the rise of far-right parties and attempts by authoritarians to infiltrate the domestic political competition of democratic countries. The approaches of various national courts in cases concerning the prohibition of political parties are far from uniform. Experiences in Spain, Ukraine, the UK and, eventually, Germany demonstrate significant contrasts regarding the political theory and legal rationale for prohibition. While democracy is a universal value for a pan-European context, the courts set different limits of democratic tolerance for guarding it. The paper offers a new paradigm that explains why and when democracies ban political parties. The classification of democratic state orientation to party bans consists of liberal, institutional and militant models, which illustrate different concepts around finding the balance between personal rights on the one hand and the interests of a democratic society on the other.

**Keywords** Political parties · Prohibition of political parties · Democratic tolerance · Militant democracy

---

✉ Bohdan Bernatskyi  
Bohdan.Bernatskyi@eui.eu  
<https://www.eui.eu/people?id=bohdan-bernatskyi>

<sup>1</sup> European University Institute, Badia Fiesolana BF429 - Via dei Roccettini 9, San Domenico di Fiesole (FI), 50014 Fiesole, Italy



## Introduction

Democracy cannot accommodate all political ideas and movements. This is a demonstration of the “eternal dilemma of democratic rule, that of ‘tolerance for the intolerant’.” (Capoccia 2001, 432). Constitutional provisions, for instance, of the majority of European states prescribe a range of actions or ideas which, if overstepped, can lead to the prohibition of a political party or disqualification of a candidate at elections. These frames form limits of democratic tolerance, which are supposed to be uniform under the common umbrella of the European Convention on Human Rights (the Convention). However, practice and constitutional parameters show how unique and different these limits of democratic tolerance can be.

Any discussion on the limits of democratic tolerance should begin with the mapping of cases on the prohibition of political actors, evidence of which serves as the best measure to weight parties from democratic to anti-democratic. A thorough attempt to systematize the mapping of party banning in Europe was made by Bourne and Casal Bértoa, who reviewed state practice on party bans in 37 European countries. They attempted to explain the dissolution of parties within legal and political contexts, and concluded that party bans have taken place in 20 out of 37 European countries, thereafter analysing 52 individual cases of party banning (Bourne and Casal Bértoa 2017, 230). The authors viewed incidents of party banning in Europe as evidence of the ongoing practice of the application of the concept of militant democracy.

In this paper, I argue that not all party bans can fall under the logic of militant democracy and, moreover, certain countries have abstained from using the militant democracy theory as such. Understanding the limits of democratic tolerance is essential to explaining why certain democracies ban far-right or anti-democratic parties, while others prefer to keep them afloat on the political market. The Federal Constitutional Court of Germany once acknowledged that the legal methods used to address the threats of anti-constitutional parties vary significantly, and while one state prohibited the Fascist party constitutionally, another state used a criminal method of intervention (Judgment of August 17, 1956—1 BvB 2/51, 1956).

To fill in this gap in understanding of why democracies ban parties, I propose an original classification of democratic state orientation towards party prohibition, based on three approaches: liberal, institutional, and militant. (Only the last applies the concept of militant democracy.) Each of these models has its own limits of democratic tolerance, with one being highly liberal towards any anti-democratic actors and another highly militant and resilient against undemocratic ideas and actions. This classification is primarily grounded in judicial decisions on the prohibition and legislative bans of parties.

To date, about 150 cases on the prohibition of political parties can be identified among the member states of the Council of Europe. (Starting from the date of Russia’s expulsion from the CoE, cases from the Russian Federation have not been taken into account.) The most active countries on party closures (see



Appendix 1) are the Russian Federation (53 prohibited parties before 2022), Turkey (23 prohibited parties), Ukraine (22 prohibited parties), France (13 prohibited parties) and Romania (9 prohibited parties). Fewer parties were prohibited in Spain (4 prohibited parties), Italy (3 prohibited parties), the Netherlands (3 prohibited parties and 1 rejected case), Belgium (3 prohibited parties), Germany (2 prohibited parties), Austria (2 prohibited parties). Only one party ban occurred in Norway, Slovakia, Latvia, Lithuania, Estonia, Moldova, the Czech Republic, Croatia, Bulgaria, the UK and Greece. Thus, a ban on political parties has taken place in 21 domestic jurisdictions among 46 member states of the CoE.

In my research I purposely refrain from analysing the practice of the European Court of Human Rights (the Strasbourg Court) because the Strasbourg Court has calibrated its own approach to party closure, a model with its own features and peculiarities that are different to those discussed in this paper. I will only briefly explain the key characteristic of the Convention model: under the Convention, member states of the Council of Europe have a positive obligation to ban political parties if the latter use violent actions to achieve political goals and/or undermine fundamental democratic principles (*Refah Partisi (The Welfare Party) and Others v. Turkey*, 2003). Each time the Strasbourg Court considers a case on party banning, it applies a three-fold test which involves a legal assessment of the following criteria: whether it is prescribed by law, whether it has a legitimate aim, and whether it is necessary in a democratic society (*Herri Batasuna v. Spain*, 2009). The Strasbourg Court has considered twenty-three cases on party closure so far.

In the pages that follow I present different approaches to understanding party banning in the scholarly literature. In this section, I develop models to describe the party-banning paradigm. The following three sections are devoted to each of the models I have identified: liberal, institutional, and militant. The article ends with conclusions and three Appendices.

The selection of particular cases of prohibition is determined by the importance and legal value of the jurisprudence under consideration. First, the UK ban and its lifting against Sinn Féin stands as a unique example within a European context, validated by practice, where the liberal model was applied. The study is narrowed to the Council of Europe member states because they are obliged to follow the same standards of ECHR, while the party bans in other democratic states, such as Australia or the USA, maintain the logic of the liberal model.

Second, German democratic militancy has deep roots both in academic literature (Molier and Rijpkema 2018) and constitutional legacy, being strongly embedded in two milestone judgements against the Communist Party and Socialist Reich Party. Therefore, it is an excellent starting point for any research on party dissolution.

Third, I intentionally cover Ukrainian practice related to party closure more deeply and with more context since it constitutes the most recent developments in the field of our investigation. Additionally, the Ukrainian experience in dealing with party bans has been given little consideration (Bourne and Casal Bértoa 2017, and the study, however, does cover Ukrainian cases only superficially, for instance, the case on the prohibition of the Communist party of Ukraine was ignored due to its “ambiguity”) in academic literature, despite its dynamism and overarching consequences. Spanish precedents, on the other hand, are well known and widely



discussed (Bligh 2013; Bourne 2013; Bourne and Casal Bértoa 2017, Casal Bértoa and Bourne, 2016).

From the outset, the Spanish cases might be better matched with relevant experience in dealing with separatists' (or secessionists') political movements (as in Turkey or the UK), but the following inquiry shows that the Spanish model of democratic tolerance has the same pattern as Ukraine or Bulgaria. This comparison may add original understanding to an already large corpus of work regarding the density and fragility of the limits of democratic tolerance.

Last but not least, in Malkopoulou and Norman's study, analysed below, the classification of state orientation towards party bans was scrutinized through the lens of competition between three models, i.e. militant, procedural and social, although the authors decided to give preference to the latter. In their opinion, the social model better explains the nature of democratic self-defence (Malkopoulou and Norman 2017).

The models in the three-tier model—i.e. liberal, institutional, and militant—elaborated in this research, are not competitive, as these models exist at the same time, highlighting variations of democratic (in)tolerance. I do not suggest that one of my models is better than the other, as their parameters and the limits they set are a matter of fact and have little to do with the quality of democracy as such.

My approach instead offers the conclusion that guarding democracy as a value does not necessarily equate to the application of precisely the same limits of democratic tolerance, nor the necessity to strive to this goal. Such an understanding is of the utmost importance for any further analysis of party closures, and for knowing why and when certain democracies are not willing to ban political parties, while others strike them down.

## Approaches to party prohibition

European democracies are facing increasing threats from far-right political movements or political parties infiltrated by foreign agents, with certain European politicians being paid by Moscow to support a pro-Kremlin agenda (Laine et al. 2023). For instance, Germany has started to face the threat of far-right radicalism, which entered parliament despite the severe stance on militancy in the Basic Law (Brandmann 2022, 414).

This is why formulating a legitimate theoretical basis for when and why a party can be legitimately banned is an important task. A party can be banned without guilt being established within the framework of criminal law, purely on the basis of the anti-constitutional or anti-democratic nature of its conduct and goals.

For instance, Ukrainian courts mandated the prohibition of more than twenty political parties because their activities or goals were contrary to the constitutional limits of democratic tolerance (see Appendix 1), given their pro-Russian engagement. Turkey has prohibited about forty political parties on the basis of national security concerns and the securing of secularism. The prohibition of two parties in Italy in 1974 and 1975 was of a different nature and appealed to historic safeguards against authoritarian rule.



To understand the nature of all these party bans, we need to consider the following scholarly approaches. Bligh argues that there are currently two paradigms to explain the phenomenon of party banning: the Weimar paradigm and the legitimacy paradigm (Bligh 2013). In short, the Weimar model entails banning a party if it seeks to implement an anti-democratic agenda, while the legitimacy paradigm justifies party banning in the case of a threat to certain elements of the “liberal constitutional order” (Casal Bértoa and Bourne, 2016, 8).

Bligh pointed out that the Weimar paradigm is limited by a procedural understanding of democracy and therefore cannot meet the threats posed by extremist parties such as the Herri Batasuna party in Spain (Bligh 2013, 1346–1357). He adds that “the current theoretical accounts of party banning lack a coherent approach as to the purpose of the banning of parties within the new banning categories” (Bligh 2013, 1357). The core of Bligh’s theory is that the first task in dealing with extremist parties is to deprive them of legitimacy, as this best meets the needs that arise in modern conditions (Bligh 2013). According to this philosophy, it makes sense to abandon the Weimar paradigm and replace it with the legitimacy paradigm.

However, his theory lacks a coherent explanation of how this particular concept of legitimacy serves as an independent doctrine and not merely as a complement to the model proposed by the European Court of Human Rights. The author himself comes to the conclusion that the Strasbourg Court continues to apply and expand the Weimar paradigm. The lack of normative explanation in Bligh’s work, especially regarding the refutation of the case law of the European Court of Human Rights, makes it hard to agree with his idea of the emergence of a new theory for justifying party banning, that is, the legitimacy paradigm.

Another approach to party banning has been proposed by Fox and Nolte in their illuminating study examining the toleration of anti-democratic political movements within democracies (Fox and Nolte 2000). The study indicates that the range of measures that can be taken by states is rather limited (Fox and Nolte 2000, 405–6), with the main one being the banning of political parties. In order to classify and analyse national practices, in particular the prohibition of anti-democratic or extremist activities, the authors propose using “two models of democratic government” (Fox and Nolte 2000): a procedural model and a substantive mode.

Fox and Nolte further divide these two models into four subcategories: tolerant procedural democracy; militant procedural democracy; tolerant substantive democracy; and militant substantive democracy. The first model, tolerant procedural democracy, includes the UK, Botswana, and Japan (Fox and Nolte 2000, 406). This model prescribes that democratic order is maintained mainly through procedures such as elections and parliamentary hierarchy. The second model, militant procedural democracy, is characteristic of the USA (Fox and Nolte 2000, 409). According to the authors, this model implies that the lack of constitutional guarantees for securing the democratic order can be relieved by utilizing specific legal acts and corresponding court practices which uphold their legitimacy. The third model, tolerant substantive democracy, includes countries such as France, Canada and India (Fox and Nolte 2000, 411). The model infers that freedom of association is protected in the constitutional acts and freedom bills, so it cannot be voluntarily disregarded. Finally, the fourth model, militant substantive democracy, is typical of Germany,



Italy, Spain, Israel and Costa Rica, amongst others (Fox and Nolte 2000, 415). Under the last model, parties can be prohibited only because of the ideas in their programme, regardless of their implementation and violent behaviour.

However, this proposed classification has a number of shortcomings. The principal disadvantage of the Fox and Nolte model is that the different constitutional frameworks for banning anti-democratic parties in, for example, Germany and Spain, have a number of significant disparities in terms of both constitutional requirements and constitutional jurisprudence. The inclusion of both countries in one category may therefore create a false perception of similarity between the models for banning political parties in countries as different as Germany and Spain.

Bourne has supported the classification calibrated by Fox and Nolte, although not without reservation (Bourne 2010). She explained that Fox and Nolte's model is causing dissonance, for instance, in mislabelling France's practice on party banning (Bourne 2010, 16). This is why it is necessary to introduce "variables" between states that "ban parties for anti-democratic or anti-system behaviour" and "those which may also, or only, ban parties for holding anti-democratic ideologies" (Bourne 2010, 16).

There is also an attempt to classify bans within the logic of the following two groups: belligerent "militant" responses to extremism and less-belligerent "immunized" responses (Bourne 2010, 14). According to Pedahzur's vision, the "immunized" model presents a liberal approach to anti-constitutional political movements, while the "militant" model employs interference, which can be regarded as undemocratic, to address threats from political actors, whose activities may be deemed anti-constitutional (Bourne 2010, 14).

To determine whether the model is either "immunized" or "militant", Pedahzur analysed a set of factors, including civil control, educational control, intelligence, administrative practices, and, at the top, legal and judicial control. Her conceptual framework on democratic tolerance is situated between two lines of research: "theoretical-normative" and "political-institutional" (Pedahzur 2004, 127).

My disagreement with Pedahzur's logic here comes from a methodological viewpoint. Defining the boundaries of democratic tolerance by means of a set of variables that are neither legally equal nor universally recognizable for assessing democratic militancy, seems troublesome. To address one more issue of concern, the author concluded that Israel and Germany are somewhere in the middle between her two models ("immunized" and "militant"), which renders the proposed classification even less applicable.

Analysing the Greek case on the striking down of Golden Dawn, Anthoula Malkopoulou proposed two systems of democratic orientation towards party bans: a "militant" model of democratic defence and a "procedural" model. She argues that the first model proscribes parties that work against democratic values, while the second intends to use means of criminal legislation to address illegal activity (Malkopoulou 2021). In her previous work with Ludvig Norman, they even proposed a three-fold system to classify democratic self-defence, namely militant, procedural and social. The former, according to these scholars, "requires unconditional democratic inclusion" of political actors (Malkopoulou and Norman 2017).



The significance of their work cannot be overstated, and moreover, their view on the procedural model is in line with the understanding of the liberal model presented in this study. They add that the procedural (here liberal) model “demands for proof of evidence in line with regular penal law” (Malkopoulou and Norman 2017). These frameworks accordingly exclude prohibition of any political actor unless there is criminal conduct in its activities.

The leitmotif of the aforementioned paper is in opposition with “Kelsenian proceduralism” and militant democracy as coined by Loewenstein, and the newly introduced social model. However, the applicability of their doctrine beyond the realms of normative discussion was never discussed. Do we have the evidence that countries or courts are referring to the social model, in what cases, and on what grounds do they rely? These questions are mostly unanswered. Thus, further investigation into the topic is necessary, considering not only theory, but practice.

Having reviewed existing approaches to the classification of democratic states’ orientations on party bans and identifying the gaps therein, I suggest their revision by proposing a new, original categorization of the models related to party banning: liberal, institutional and militant. The proposal provides a more adaptable approach to the limits of democratic tolerance and thus can accurately classify the model of prohibition of political parties the domestic authorities apply.

The liberal model:

Under the liberal model, the activities of a party, like any other group, are limited only by the requirements of criminal law. The application of this model always requires the availability of proof, higher standards of compliance with procedural law, a sound base of evidence and other *sine qua non* criminal proceedings. The critical difference between the institutional model and the liberal model is that the former does not require the application of criminal law as a mandatory instrument for banning a party. Countries that use the liberal model include the UK, Iceland, Greece and, outside the CoE, e.g. the USA and Australia.

The institutional model:

Under the institutional model, parties are prohibited from promoting a programme aimed at: violating state independence, national sovereignty or territorial integrity; seizing power; committing acts of political violence; inciting hostility; spreading discrimination; violating human rights and freedoms; etc. The example of Herri Batasuna and Batasuna v. Spain is one of the clearest examples of a state choosing the institutional model to ban a party while retaining the possibility of applying criminal charges. Article 37 of the Constitution of Ukraine may also serve as a meaningful reflection of the institutional model. The institutional model can also be seen in Hungary, Slovakia, Austria, Belgium and the Netherlands.

The militant model:

The key distinguishing factor of the militant model is that, in addition to unconditionally guaranteeing the institutional foundations of the state, it prohibits political parties from promoting the abolition of the democratic system as a political goal. The militant model is most clearly illustrated in Article 21 of the Basic Law of the Federal Republic of Germany. States that apply the militant model include Germany, Turkey and the Czech Republic.



To determine the model in operation in a certain country, a simple legal reading of the constitutional provisions does not suffice. The determination should be made on the basis of several criteria, including constitutional provisions and judicial decisions, and sometimes also law enforcement practices. The case of Spain's party prohibition experience is rather intriguing, because Spanish courts on the one hand refuse to recognize the militant model, and on the other claim that the liberal model is not substantiated. As a result, Spaniards are placed perfectly in between approaches used in the UK and Germany.

The previously mentioned classification has specific reservations. First, transition between models is possible, though only as an exception, but in practice we find that only Ukraine made a transit from the liberal to the institutional model. Second, the models are overlapping (see Appendix 3), which means that the liberal model sets the mildest response to anti-democratic or anti-constitutional political forces. As the UK experience shows (see the example in the section on the liberal model), such democratic policies keep even the most ferocious enemies of democracies (or anti-state actors) afloat, giving priority to individual criminal actions. The second, the institutional model dictates that a certain set of actions are prohibited (e.g. violation of territorial integrity or war propaganda), but only the militant model prescribes that certain ideas can lead to a party ban, making the last model the most rigid.

## The liberal model

The liberal model of the prohibition of political parties is the most open-minded. Under this system, parties are allowed to pursue any goals, including anti-democratic or anti-constitutional ones. The only bar for parties' activities is set out by criminal legislation. This model is commonly used in the Anglo-Saxon legal system, namely in the UK, the USA (Pedahzur 2004, 137) and Australia ('Communist Party case', 1951). For countries with the liberal model of prohibition, the absence of constitutional provisions which directly govern the status of political parties or grounds for their prohibition is relevant.

As an illustration, we can discuss the Greek scenario. Despite the militancy in the text of the Greek Constitution, law enforcement practice and case law demonstrate the reluctance to use the concept of militant democracy (as was shown in the case of Golden Dawn). Malkopoulou explains their unwillingness to ban parties because of the historic memory of "the military junta's dissolution of all political parties in 1967". So it might be more accurate to conclude that Greece is an example of the liberal model of party dissolution. The prohibition of Golden Dawn took the form of the dissolution of a criminal organization, not a political party as such (Malkopoulou 2021). Adding the numerous charges against the members of Golden Dawn, we can group Greece with the states that have opted for the liberal approach to party bans.





## **UK: keeping politically afloat insurrectionary opponents by applying the liberal model**

In 1922, the Parliament of Northern Ireland passed “the Civil Authorities (Special Powers) Act” (SPA), the provisions of which gave the power to prohibit illegal associations. Between 1922 and 1972, the SPA empowered the Northern Ireland government to take the measures necessary to maintain peace and order (Bourne 2018, 114). In 1956, the Home Secretary banned one of the Northern Irish political parties, Sinn Féin, by Order No 199, issued on the basis of the SPA.

The grounds for the ban were that the party’s activities constituted “a threat to the maintenance of peace and order and a threat to law and order and proper governance” (Bourne 2018, 114). In 1957, in a similar order, order No. 42, a political movement formed after the ban on Sinn Féin, the Republican Clubs, was banned. The ban on Sinn Féin occurred in the context of a series of attacks by the Irish Republican Army (IRA) on British military units, police stations, courts and other facilities in Northern Ireland in 1956. This campaign continued until 1962. Sinn Féin, for its part, came out in support of the actions of the IRA, for example, with a statement to the following effect: “The Sinn Féin Organization states to the Irish people that they are proud of the risen nation and appeal to the people of Ireland to assist in every way they can the soldiers of the IRA. Constitutional methods alone against armed occupation, civil injustice and victimization, could not possibly be made effective. Only when Ireland is completely free and independent will Ireland be at peace” (Bourne 2018, 116–7).

The case on the banning of Republican Clubs was referred to the House of Lords, but the question of whether the ban was lawful was not considered (McEldowney v Forde, 1969). The government of Northern Ireland saw Sinn Féin and the Republican Clubs as a structural part of the military threat posed by the IRA. The Home Secretary, who was briefed on the party ban, said that Sinn Féin should not be regarded “as a political organization in the traditional sense, because it has more to do with bullets than with ballot boxes” (Bourne 2018, 119). However, in 1973–1974, the status of Sinn Féin and the Republican Clubs was restored, and the ban on their activities was lifted (Bourne 2018, 129).

The lifting of the ban took place after the IRA declared a cease-fire and Great Britain established direct governance in Northern Ireland. By legalizing banned parties, the British government hoped that such a measure would help end the violence (Bourne 2018, 131–2).

Ten years after the ban, the British government noted that some members of Sinn Féin and the Republican Clubs continued to associate themselves with the IRA and with its policy of terror (Bourne 2018, 134). Despite the continuation of terrorist attacks, the British government offered the main rationale for the legalization of Sinn Féin and the Republican Clubs being to give them the opportunity to participate in the electoral process. The latter, in turn, was supposed to be a favourable environment in which to find a political compromise on the conflict in Northern Ireland. Despite the restoration of the status of banned organizations, the government continued to actively prosecute individual members of these



organizations within the framework of criminal law, in particular for committing terrorist acts (Bourne 2018, 138).

The experience of Great Britain in the practice of banning political parties is highly controversial, mainly because the status of banned parties was reinstated when terrorist attacks continued, and many members of these organizations were affiliated with the IRA. On the other hand, the British government has developed its approach to combatting violence as a means of achieving political goals by making a rather tentative distinction between the political activities of Sinn Féin and the Republican Clubs and the criminal activities of its members. Thus, the UK opted for the liberal model of the prohibition of political parties because the government was mainly focused on the criminal activities of party members and simultaneously allowed the activities of the party.

## The institutional model

The institutional model assumes that parties are allowed to pursue any political goals except those aimed at destroying the state, inciting hatred, and grossly infringing on fundamental rights and freedoms and others (see Appendix 2). The key delimiter between the institutional and militant model is whether the changing of the democratic political order as such is permissible or not. The militant paradigm strongly and expressly declares all political ideas or actions which go contrary to democratic principles to be unconstitutional. The institutional model does not operate as a safeguard of democracy in the militant fashion.

This set of prohibited actions or aims specifically grants protection for the foundation of the state, independence and territorial integrity. Thus, the issues of territorial concession or the separation of certain regions from a state can legitimately trigger the dissolution of a political party. Countries operating under this framework use the institutional model to address the threats posed by radical far-right parties, e.g. CP'86 in the Netherlands or the Flemish Bloc in Belgium, (Bligh 2013, 1339–40) or insurrectionary parties (such as the Opposition Bloc—For Life in Ukraine, OPFL).

In certain instances, the protection of human rights might be seen as an obligation to protect the democratic order. Protecting political rights and freedoms is barely possible for authoritarian societies. Although democracy as a value and principle is inherently connected to human rights and the rule of law, the Statute of the Council of Europe and the Convention regard these values separately. More fundamentally, ECtHR consistently articulates the necessity to find an appropriate balance between individual rights and the interests of democratic society, consistently attributing the primacy to latter (Refah Partisi (The Welfare Party) and Others v. Turkey, 2003). The same methodological distinction is maintained throughout my paper. So, in the context of human rights, the institutional model is essentially focused on the individual rights-protection approach rather than on defending the abstract value of a democratic order.

Furthermore, the institutional model prohibits the questioning of territorial integrity, while it is generally acceptable for the Strasbourg Court (Yazar et al. v. Turkey, 2002), and the prohibition of insurrectionary movements can thus take place.



Certain practitioners have found the decision to ban separatist parties at odds with fundamental human rights principles (Letnar Cernic, 2010) but these rigid limits as to territorial integrity or national security are natural for an institutional model.

### **Spain: refusing militant and liberal paradigms to justify banning insurgent and terrorist movements**

In 2003, the Supreme Court of Spain mandated its first ban against the Herri Batasuna (and EH and Batasuna) political parties (hereinafter, we will refer to this case as the “Herri Batasuna” case). Herri Batasuna, translated from the Basque, means Popular Unity. The ban happened merely a year after the adoption of new organic law no. 6/2002 on Political Parties. It is therefore important to recall the contours of Spain’s constitutional status regarding political parties, since political pluralism is a driving normative value for all aspects of political life on the territories of the Iberian Peninsula.

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... (Section 6 of the Constitution of Spain)

The main reason given to dissolve Herri Batasuna was its affiliation and collaboration with the terrorist group ETA. The Supreme Court of Spain characterized the activities of Herri Batasuna as the political facade of terrorism, which operated in constant political complicity with the ETA group. The task of Herri Batasuna was therefore to legalize or favour violence and terrorist acts. There were no signs of disapproval from the leaders or members of Herri Batasuna, and the party even endorsed acts of violence (Judgment of March 27, 2003 (HB and successors ban), STS 2133/2003, 2003). The Constitutional Court upheld the decision of the Supreme Court. The final straw in the dispute was announced in Strasbourg, where the Strasbourg Court found no violations of the applicant’s right to freedom of association (Herri Batasuna v. Spain, 2009).

In 2008, the second ban came into effect against the political party Eusko Abertzale Ekintza—Acción Nacionalista Vasca (EAE/ANV). The Supreme Court of Spain found the party to be acting as a successor to the prohibited Herri Batasuna. The political objectives of EAE/ANV were identical to its predecessor, despite the fact that Herri Batasuna was prohibited, given its aforementioned promotion of unconstitutional aims. The party’s activities and aims were determined to be systematically and seriously complementary to Herri Batasuna, and consequently, to be in support of the terrorist band ETA (Judgment of September 22, 2008 (Judgment of September 22, 2008 (Eusko Abertzale Ekintza—Acción Nacionalista Vasca ban), STS 4581/2008, 2008). The appeal was declined by the Constitutional Court. The party’s petition to the Strasbourg Court was also unsuccessful.

At a similar time and in a similar style, the Supreme Court of Spain outlawed the political party Euskal Herrialdeetako Alderdi Komunista/Communist Party of The Basque Lands (EHAK/PCTV). Like the EAE/ANV, the party had maintained close political, operational and economic relationships with the prohibited Herri



Batasuna party. In so doing, the party legitimized violence as a means to achieve political objectives in the same manner as Herri Batasuna (Euskal Herrialdeetako Alderdi Komunista/Communist Party of the Basque Lands ban, 2008).

In many regards, the position of the Supreme Court of Spain is emblematic of the institutional model of the prohibition of political parties. The Spanish Court specifically dedicated a part of its reasoning to the model of prohibition inherent to the Spanish constitutional system. The Court stressed that the Constitution is not governed by the concept of a militant democracy, and instead the constitutional provisions form an extremely tolerant system open to absolutely all ideas (Judgment of September 22, 2008 (Eusko Abertzale Ekintza—Acción Nacionalista Vasca ban), STS 4581/2008, 2008). The Court labelled this “combatively tolerant” (Judgment of March 27, 2003 (HB and successors ban), STS 2133/2003, 2003).

The reasoning of the Spanish courts means that an imaginary political programme or actions within prescribed constitutional frameworks to eliminate the democratic order will not per se constitute adequate legal grounds to ban a party. This hints at a principal distinction between the militant and institutional models, as the former can exclude actors with undemocratic aims or actions from the political competition. To wit, the Supreme Court of Spain distanced itself from the doctrines applied by their French or German counterparts by pointing out that the Spanish Constitution accepts all changes unless they strictly contravene formal and procedural requirements (Judgment of September 22, 2008 (Eusko Abertzale Ekintza—Acción Nacionalista Vasca ban), STS 4581/2008, 2008).

Yet, the Spanish institutional model, despite its focus on violent (terrorist) activities in the cases of Herri Batasuna, is not a liberal model, as some scholars mistakenly consider it (Letnar Cernic, 2010, 5). The Spanish courts’ argumentation was mainly based on terrorist activities, although it was not limited to the criminal context of ETA terrorist acts (Euskal Herrialdeetako Alderdi Komunista/Communist Party of the Basque Lands ban, 2008). Thus, the review of the cases on party banning was wider than a mere listing of indictments of ETA members and their affiliation with political parties. Rather, the role of parties was screened through the lens of mediators and political actors to cover violent activities.

The Court addressed the claim of Herri Batasuna that illegal conduct of the party and its subsequent ban should be admissible within the scope of the Penal Code. Responding to that, the Supreme Court of Spain rejected the defendant’s position. The nature of article 6 of the Constitution of Spain explicitly allows the imposition of additional limitations on the activities of political parties which are not necessarily connected to criminal offences as such (Judgment of March 27, 2003 (HB and successors ban), STS 2133/2003, 2003). In the PCTV/EHAK case, the Court concluded that the presence of criminal convictions of the party’s members or its absence plays only a secondary role and in no way can be regarded as the single guiding reason to outlaw a party (Euskal Herrialdeetako Alderdi Komunista / Communist Party of the Basque Lands ban, 2008).

This is why the prohibition of political parties is non-criminal in nature (as in the UK case of Sinn Féin), and guarantees of the criminal proceedings are not applicable therein. Limits on the activities of political parties, the Court promulgated, are



required for the normal development of parties in democratic societies within the framework of the institutional model.

### **Bulgaria: defining constitutional value of the highest order**

In 2000, the Constitutional Court of Bulgaria declared the political party “United Macedonian Organization—Ilinden”, a party for economic development and integration of the population (“OMO-Ilinden”—PIRIN), as unconstitutional (Constitutional case No. 3 of 1999, 2000). The Court considered “OMO-Ilinden”—PIRIN as a successor to the illegal OMO “Ilinden” organization which sought to “unite ethnic Macedonians from Pirin Macedonia” and secede from Bulgaria. The link between “OMO-Ilinden”—PIRIN and OMO “Ilinden” was of critical importance because it allowed the Court to consider the activities of the party from a historical perspective.

The limits of Bulgarian democratic tolerance have been set through two avenues in the Constitution: article 11 and article 44. The Court examined these two constitutional avenues separately. No violations were found under article 11 of the Constitution, and the Court focused its reasoning around article 44 of the Constitution to verify whether the activities of the party pose a threat to the territorial integrity of Bulgaria. The Court found that leaders and members of “OMO-Ilinden”—PIRIN were promoting ideas about the separation of the Pirin region from Bulgaria and integration into Macedonia (Constitutional case No. 3 of 1999, [2000]). For instance, there was a distribution of maps where the Pirin region was painted as a part of Macedonia. The Constitutional Court established that the party’s activities were centred around the Pirin region, which they regarded as “non-Bulgarian land”, a territory under temporary administration by Sofia.

Thereafter, the Court concluded that the party manifestly acted against the territorial integrity of Bulgaria, which is why “OMO-Ilinden”—PIRIN had overstepped the limits of democratic tolerance fixed by the Constitution (Constitutional case No. 3 of 1999, 2000). The territorial integrity and indivisibility of Bulgaria is of a “value of the highest order”, so all ideas or actions that lead to secession have no right to exist in the Bulgarian political market.

### **Ukraine: transformative model from liberal to institutional**

In 1991, following Ukrainian independence, the Presidium of the Ukrainian Parliament banned the *Kompartii*. In 2001, the Constitutional Court of Ukraine (CCU) fully reversed the 1991 ban on the outlawed *Kompartii*, finding that the Presidium’s decision to ban was legally flawed (Decision № 20-rp/2001, 2001). In making its decision, the Constitutional Court of Ukraine opted for the liberal model of banning parties because the absence of criminal liability of the leaders of *Kompartii* meant the party could not be accused of acting unconstitutionally.

The decision to reverse the *Kompartii* ban had great symbolic significance in reviving Soviet-era nostalgia in Ukraine (Trochev 2003, 535), but the implications reached far beyond the purely symbolic. The Court’s reasoning oscillated between legal and factual analysis (Trochev 2003, 540), and as such, no fully



comprehensive legal analysis took place. The Court appeared to apply freedom of association standards—using the liberal model—without fully considering the context and background that necessitated the ban. The application of the liberal model in circumstances when criminal proceedings were almost impossible due to the challenges of the transitional period seems inadequate and erroneous.

Since the Euromaidan Revolution in 2014, Ukraine has encountered many challenges in banning political organizations and prosecuting leaders who have made attempts to undermine the territorial integrity and constitutional order of the country. There were no cases prior to 2014 of a Ukrainian court ruling to ban a political party for its unconstitutional activities. From 2014 to 2023, the Ukrainian government initiated dozens of proceedings to ban political parties.

Though the banning of parties in Ukraine bears some contextual resemblance to similar European bans, the dissolution of political parties based on the argument of self-defence raises new human rights concerns. Namely, it raises the question of the extent to which European freedom of association standards apply to political parties in times of war or public emergency. Roman David astutely noted that the “situation in Ukraine... is different from the situation in other countries... The application of European standards needs to take into account both of these facts” (David 2018, 150).

In 2014, during the first wave of bans, Ukrainian courts banned two Russian-oriented parties, which operated mainly in Crimea. During the second wave of bans in 2015, the Court terminated the activities of two pro-communist parties. The third wave started after the full-scale invasion of Ukraine by the Russian Federation and resulted in the dissolution of 17 political parties, mainly because of their political affiliation with Russia.

In the first wave in April 2014, the District Administrative Court of the City of Kyiv (DACCK) ruled in favour of the Ministry of Justice (MoJ) claim, effectively banning the Russian Bloc (Postanova (ruling) on Russian Bloc party—case No. 826/4717/14, 2014). The Court found that the head of the Russian Bloc had held meetings at which he had called for unlawful actions such as the formation of paramilitary groups to violently overthrow the government. Also in April 2014, the District Administrative Court of the City of Kyiv started proceedings to ban Russian Unity, another Russian-oriented political party (Ukhvala (order), 2014). Serhii Aksyonov (Prosecutor General’s Office of Ukraine 2016), the self-proclaimed prime minister of Crimea, was leader of the party at the time. The Court ruled that the leader of Russian Unity had called for the violent overthrow of the government, the mobilization of militia groups, and other legal violations (Postanova (ruling) on Russian Unity party—case No. 826/4716/14, 2014).

The second wave included the banning of two communist parties. In July 2015, the District Administrative Court of the City of Kyiv commenced proceedings to terminate the activities of the Communist Party of Workers and Peasants (CPWP), based on a lawsuit filed by the Ministry of Justice (Ukhvala (order),



2015). In September 2015, the Court ruled in favour of terminating the activities of the party (Postanova (ruling) on the Communist Party of Workers and Peasants—case No. 826/15405/15, 2015). In its findings, the Court ruled that current laws permit the banning of political parties whose goals or activities involve the glorification of totalitarian ideology and symbols.

The banning of the Communist Party of Ukraine (renewed) (CPU) took place alongside the banning of the CPWP. In September 2015, the Court ruled to officially ban the Communist Party of Ukraine (renewed), (Postanova (ruling) on the Communist Party of Ukraine (renewed)—case No. 826/15406/15, 2015), the most contentious case of political party banning in Ukraine. Between 2014 and 2015, the Ministry of Justice brought two separate sets of proceedings against the CPU (on banning and termination of activities). The CPU was finally prohibited only in 2022, in line with other anti-Russian bans.

In July 2019, the Constitutional Court, contrary to its counterparts in Hungary and Poland, and to its own decision in 2001, declared that the banning of communist and National Socialist ideology and symbols under Law No. 317-VIII was fully constitutional (Decision № 9-p/2019, 2019). This decision is remarkable in many respects. For one thing, this was the first time a Ukrainian court had condemned the ideological remnants of Ukraine's Soviet period and their implementation by parties. With this decision, the CCU took a tough stance on condemning totalitarian regimes and ascertained the necessity to ban their ideological symbols for the sake of historical and national security interests (i.e. the Court acknowledged that Communist propaganda and symbols are an element of aggression against Ukraine). This is also the moment when the Constitutional Court reversed its opinion as of 2001, and the liberal model for prohibition of political parties was no longer valid.

The third wave began in 2022. In May–June 2022, the Ministry of Justice of Ukraine filed claims with the court to ban 16 political parties (see Appendix 1). The submissions resulted in the prohibition of 16 political parties. Of the 16 mentioned parties, OPFL was the only major party and the only party that had a parliamentary faction. It won 43 seats in the 2019 early parliamentary elections and was the second biggest parliamentary faction at the beginning of the parliament's tenure. According to the analysis of the Civil Movement Chesno, the party had more than 3400 deputies in local councils (Fedoriv 2023).

All of these political parties were prohibited due to their systematic and anti-constitutional activities aimed at overthrowing the constitutional order of Ukraine. In the case of the prohibition of OPFL, the Court analysed the statements and speeches of the members (and former members) of the OPFL, noting that the party's members actively called for violence, did not condemn Russian actions and carried out anti-state activities (Appeal decision on satisfying the administrative lawsuit of the Ministry of Justice of Ukraine on banning the OPFL party, № II/857/8/22, 2022). In the same vein, the Court outlawed Shariy's party, prompted by the Ukraine-phobic statements of Anatoliy Shariy and his discreditation of Ukrainian state institutions,



which shared the narrative of official Russian propaganda (Appeal decision on satisfying the administrative lawsuit of the Ministry of Justice of Ukraine on banning the Shariy's Party, № II/857/1/22, 2022). The argumentation and logic of the court decisions in all of the other cases were the same.

Ukrainian courts had focused their party-related jurisprudence around measuring the parties' rhetoric, rather than actions or financial flows. In all cases, the Court reported that parties incited violence and spread war propaganda. In their decision, the courts referred to the concept of a "democracy capable of defending itself", mentioning that this concept is a part of Ukrainian constitutional architecture and it is applicable to insurrectionary parties, whether or not they strive to change the democratic order. However, all references made regarding the concept of a "democracy capable of defending itself" were inconsistent and legally questionable. The courts merely cited that such a concept exists, although no links to how in particular this concept was to be applied for concrete cases were provided.

Here we recall two important implied observations. Given the role of Russian-affiliated parties operating in Ukraine, it is possible to conclude that their final political goal was to replace the democratic order by appeasing Russian invaders and helping Russian troops to establish authoritarian order. If so, the reference to the concept of a "democracy capable of defending itself" might be found valid and sound. If not, the parties were then merely instruments in the hands of Moscow, functioning exclusively to undermine the national security of Ukraine. This argument, however, was not addressed by the courts directly.

The second matter of concern is whether the activities of insurrectionary parties to which a foreign undemocratic state contributes should immediately invoke the application of a "democracy capable of defending itself". The practice is too uncommon to answer definitively now. The limits of Ukrainian democratic tolerance have been set, evolving through two avenues. Between 2001 and 2014, the Ukrainian model resembles patterns of the liberal model. Starting from actively banning the Russian-affiliated parties, the system gradually changed into the institutional model in 2022 on the eve of the war with Russia.

## **Barring foreign interference in domestic politics: lessons from Ukraine**

Ukraine's experience is the only contemporary example that sheds light on the case of banning political parties controlled or infiltrated by agents of a foreign state. This is despite the problem of the growing tendency of foreign interference, especially inspired by authoritarian regimes, in the domestic politics of European countries (or other democratic countries, such as Australia). Historic examples demonstrate how foreign influence on national politics led to state collapse, the case of Czechoslovakia being a good example (Issacharoff 2015, 57). Instead Finland, like the modern Ukrainian state, barred foreign-infiltrated parties from operating on the political scene and in so doing preserved the state's existence.





Even so, there are cases of foreign interference by the Russian Federation, including in Cyprus, where parliament passed a pro-Kremlin resolution to lift sanctions under the direct interference of Moscow, which bribed Cypriot politicians to support the resolution (Tkachenko and Laine 2023). In the European south, disturbing reports threw light on how local deputies in Italy adopted a resolution on lifting EU sanctions in exchange for a trip to Crimean wineries (Anesi et al. 2023). Moreover, some official reports clearly identify that Russia is behind many “proxy actors to exert political influence and cause social unrest... via Far-Right groups... in the West” (Intelligence and Security Committee of Parliament, Extreme Right-Wing Terrorism, 2022).

Australian officials started to become concerned about the threat stemming from foreign interference on internal policy and subsequently passed a law banning foreign donations (Hawke 2019). The adoption of new restrictions took place amidst talks on the necessity of limiting Chinese influence on political decisions. The same concerns were shared by neighbouring New Zealand, which moved to pass the same ban on foreign donations (Little 2019).

## **The militant model: the bellicose enemy of authoritarianism**

In the group of states which fall under the militant model, democratic order is explicitly protected through constitutional provisions or sometimes through the militant interpretation of constitutional courts (or, if the latter is absent, high courts). In certain cases, the militant character of a democracy might be prescribed by constitutional prerequisites, although the case law may demonstrate the lack of militancy.

Under the first model, that of militant, political parties can promote any ideas or implement any doctrines except those aimed at dismantling a democratic system. The concept of “militant democracy” or “democracy capable of defending itself”, as defined by the Strasbourg Court, is the theoretical backbone of this model. According to this approach, democracy tolerates all political ideas except the idea that democracy must perish. In the militant model, a democratic order is “granted superior status” and it “requires [parties] to abide to such normative democratic criterion” in their programme goals or behaviour (Malkopoulou 2021).

## **The German militant tradition to protect the democratic order**

The basis of the militant model is the Basic Law of the Federal Republic of Germany and two precedents on the prohibition of political parties: the Socialist Reich Party (SRP) ban (Judgment of October 23, 1952—1 BvB 1/51, 1952) and the Kommunistischen Partei Deutschlands (KPD) ban (Judgment of August 17, 1956—1



BvB 2/51, 1956). These two parties are exemplary of the militant model, described thus in Article 21 of the 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... of the Federal Republic of Germany shall be unconstitutional.

In the 1952 case, the Federal Constitutional Court found strong evidence of similar patterns in the activities, programmes, ideas and overall style of the Socialist Reich Party and the German Nationalsozialistische Deutsche Arbeiterpartei (NSDAP)/Nazi party. Members and leaders of SRP were alleged to engage in the glorification of Hitler, revisionism and revanchism. The political aims of the SRP were to dismantle the multiparty political system, liquidate human rights guarantees and revive antisemitism. The Court subsequently mandated a ban by promulgating the party as unconstitutional (Judgment of October 23, 1952—1 BvB 1/51, [1952]).

In the 1956 case, the Federal Constitutional Court delivered a second verdict on dissolution of the KPD (Judgment of August 17, 1956—1 BvB 2/51, 1956). Whereas the SRP case can be viewed, largely, as an attempt to prevent revanchism by remnants of Nazi perpetrators, the KPD case became a battle of ideologies, the liberal democratic system opposed to the socialist-communist social order. The Court indicated that it was not in a position to argue with the soundness of Marxism-Leninism teachings per se, but instead, the task before the first-elected German constitutional judges was to assess whether the KPD followed communist teachings in a way that endangered the free democratic order. In so doing, the Court promulgated the unconstitutional character of the KPD and subjected it to dissolution (Judgment of August 17, 1956—1 BvB 2/51, 1956).

However, the German Federal Constitutional Court in the recent case against the National Democratic Party of Germany (NDP), (2BVerfG, 2 BvB 1/13, National Democratic Party II, [2017]), ruled not to ban the party despite its clearly stated anti-democratic goals (Molier and Rijpkema 2018, 394). The Federal Constitutional Court's decision was based on "a 'risk calculation' test" which judged whether or not there was a real probability of the NDP implementing an antidemocratic agenda (Molier and Rijpkema 2018, 406). In the end, the Court ruled that the party was too insignificant to warrant a ban.

German militancy is a perfect example of this model of the prohibition of political parties. The foundation of militancy is based on the text prescribed by the Basic Law, while militancy is simultaneously deeply rooted in the history of Germany as a precaution for future democratic backsliding. Militancy in Germany is also becoming more adaptable to new realities and threats posed not by clear enemies of democracies, but by threats coming from far-right political actors with ambiguous views.



## **Pioneering experience in the Czech Republic of dealing with far-right political movements**

In 2010, the courts of the Czech Republic decided to dissolve the Workers' Party. This was the first case of a political party being banned in the Czech Republic. The case consisted of three separate submissions. The government's first submission in the Pst 1-2008 case was rejected due to insufficient evidence. In the second submission in the Pst 1-2009 case, the government claimed that the Workers' Party violated the Constitution and laws, and its purpose was to eliminate the democratic order of the state (Miroslav Mareš, 2012, 33). In its decision, the Supreme Court agreed with the government's evidence and ruled to ban the Workers' Party (Judgment Pst 1/2009, 2009). The Constitutional Court, in turn, rejected the appeal of the Workers' Party, drawing attention to the need to respect the constitutional principles of free and peaceful competition between political parties (Miroslav Mareš, 2012, 41).

In the Court's opinion, statements made by the members and leaders of the Workers' Party promoted xenophobia and racism, especially against the Roma ethnic group. Simultaneously, the party's rhetoric created an atmosphere of fear and hostility towards foreigners, homosexuals and Jews (Judgment Pst 1/2009, 2009). In regard to the party's programme alignment with the ideology of German National Socialism, the Court stated that the ideological positions of the Workers' Party were in line with and in certain instances identical to the doctrine of National Socialism (Miroslav Mareš, 2012). Third, the party was founded in connection with extreme far-right movements, neo-Nazi organizations and even paramilitary formations (such as the Protection Corps). Fourth, the party systematically took part in and organized meetings with the aim to foster hate speech against minorities (Miroslav Mareš, 2012).

All the above allowed the Court to conclude that the activities of the Workers' Party overstepped the limits of democratic tolerance in the Czech Republic, and it was subject to dissolution. While the prohibition of a political party because of hate speech and threatening to cut off minorities' rights can fall within the margins of the institutional model, the Court's reasoning made it clear that the militant model is applicable in the Czech Republic. The Workers' Party, the programme of which was in line with the programme of German National Socialism, was attempting to impose totalitarian ideology contrary to the Czech democratic order. To wit, the Court several times recalled the concept of defending democracy throughout the text of its judgement. For example, the judges noted that defending democracy opens the possibility for the judiciary to take preventive measures against anti-democratic actors.

The Supreme Court also addressed the issue of criminal convictions against the members of the Workers' Party, though the presence or absence of criminal cases serves only as a complementary, not stand-alone, source of consideration (Judgment Pst 1/2009, 2009).



Thus, the militant model of prohibition is evident through the lens of the Workers' Party case. The origins of militancy also stem from the Act of Law 424/1991 Coll., on association in political parties and political movements of the Czech Republic. The above prescribes,

The following political parties and movements may not be established and operate: a) political parties and movements breaching the constitution and acts of law or seeking to remove the democratic foundations of the state... (Art. 4, Act of Law 424/1991 Coll., on association in political parties and political movements).

This is in addition to the fact that the Constitution of the Czech Republic does not have a strong text on its militant character, instead requiring parties only to “respect fundamental democratic principles”. The notion of democratic principles might be seen as much more limited in comparison with the German counterpart of a free democratic order. The important path to militancy of the Czech Republic also has roots in the history of the country, which was under military occupation, first by the Nazis, and later by the Communists (Miroslav Mareš, 2012, 147).

## Conclusions

Bourne and Bértoa in their seminal work on the mapping of militant democracy relied heavily on Bligh's model of democratic tolerance, which they characterized as “the most extensively-developed”, leading them to the conclusion that the “Weimar party ban paradigm has largely been replaced by the legitimacy paradigm” (Bourne and Casal Bértoa 2017).

In contrast, the findings in the present paper demonstrate that not all party bans are connected to the concept of militant democracy per se. Some of them (as in the UK or Spain) have nothing in common with the concept of militant democracy. Second, if Bourne and Bértoa's mapping implies the almost complete replacement of Weimar by the legitimacy paradigm, this research instead revises party proscription models as stable and utterly predictable elements. Even when transformation is happening (as in the Ukrainian case from liberal to institutional), it is a rather exceptional scenario, the result of judicial misinterpretation or external shocks.

Yet, a lack of court practice might hinder the pronouncement that a country is employing one of the three models, but, on the other hand, this is not essential if there is a well-functioning political landscape, with no proscription precedents in place. The models of party banning can also help to reduce ambiguity, which Bourne and Bértoa, for instance, noted relating to the classification of the prohibition of the Communist Party of Ukraine (Bourne and Casal Bértoa 2017). Applying the three-tier model we are able to clarify any such ambiguities by establishing through analyses of Ukrainian court decisions and Constitutional provisions that the militant democracy concept has not been applied, and courts mandated the banning of Ukrainian communists on the grounds of their links with Russia and subversive activities, instead of their undemocratic goals.



To sum up, the present three-fold classification allows for a better understanding of the logic domestic authorities apply in dealing with cases of the dissolution of political parties. The idea of how, when and why a democratic state intends to ban a political party lies in its history, constitutional prerequisites, jurisprudence and law enforcement practice. We established three different types of limits to democratic tolerance: liberal, institutional and militant. The proposed models explain why certain democracies ban anti-democratic political actors while other democratic countries prefer to keep all political parties alive.

Germans decided to secure a free democratic order by integrating direct provision in the Basic Law. The Federal Constitutional Court scrutinized this constitutional concept and gave birth to it. In doing so, the German model towards party prohibition became militant. Any idea or action contrary to a free democratic order can be constitutionally outlawed. It is important to stress that under the militant model, a party can be dissolved only because of the abstract implementation of its future policy, regardless of ongoing actions or aims.

The Spanish paradigm rejects use of the idea of prohibiting parties only for abstract ideas, which might even go beyond democratic principles. Instead, the Spanish judiciary decided to use the institutional model of party banning, in which a party is not allowed to perform a specific set of actions directed against basic constitutional premises. Finally, the UK approach to party bans can fall only under the liberal party banning domain because of an unwillingness to prohibit any political party unless the criminality of the party's members is established.

Here it can be concluded that the concept of militant democracy, which is frequently used as a legal and theoretical justification for party bans, has no role in half of the incidents related to party closures. The concept is consequently not universally applied as an integral backbone for setting the limits of democratic tolerance, nor it does play a role in disqualifying a political competitor, at least, in half of the member states of the CoE.

Setting clear limits of democratic tolerance, either the broadest through the liberal paradigm, or the narrowest through the militant paradigm, is the primary task of the court, as it is the single arbiter in giving a red card to a political player and sending him out of the political arena. The proposed three-tier model can help the judiciary in tackling this burdensome task rigorously, while allowing them to avoid traps when referring to the militant democracy concept (which Ukrainian courts blindly cited, though affording it no legal value).

Bourne and Bértoa expressed the belief that building models to analyse why democracies decide to ban political parties, and what concerns accompanied such proscriptions, can help to better understand the tendencies of how European countries set limits of democratic tolerance (Bourne and Casal Bértoa 2017). This work corroborates these joint efforts, revealing trajectories of party banning presented in different societies and political contexts. Thus, despite the circumstances differing in every country, their experiences can be grouped and evaluated in the defined categories, elucidating the logic of why and when democracies decide to ban a party.



## Appendix 1: Table of the cases on prohibition of political parties in the Council of Europe member states

Country	Political party	Year of banning	Case	Judgement date	Appeals judgement date
Ukraine	Communist Party of Ukraine (Suspension of activity)	2015–2022	Ministry of Justice of Ukraine v Communist Party of Ukraine	16.12.2015	03.05.2022
Ukraine	Russian Bloc	2014	Ministry of Justice of Ukraine v Political Party “Russian Bloc”	13.05.2014	17.06.2014
Ukraine	Communist Party of Ukraine (renewed)	2015	Ministry of Justice of Ukraine v Communist Party of Ukraine (renewed)	30.09.2015	
Ukraine	Russian Unity	2014	Ministry of Justice of Ukraine v Political Party “Russian Unity”	30.04.2014	04.09.2014
Ukraine	Communist Party of Workers and Peasants	2015	Ministry of Justice of Ukraine v Communist Party of Workers and Peasants	30.09.2015	
Ukraine	Opposition Bloc	2022	Ministry of Justice of Ukraine v Political Party “Opposition Bloc”	08.06.2022	
Ukraine	Socialists	2022	Ministry of Justice of Ukraine v Political Party “Socialists”	13.06.2022	23.09.2022
Ukraine	Justice and Development (ex For the Welfare and Social Protection of the People)	2014 (rejected); 2022	1) State Registration Service v All-Ukrainian Chornobyl People’s Party “For the welfare and social protection of the people”; 2) Ministry of Justice of Ukraine v Political Party “Justice and Development”	1) 14.03.2014; 2) 13.06.2022	1) 15.07.2014
Ukraine	Ours	2022	Ministry of Justice of Ukraine v Political Party “Ours”	14.06.2022	
Ukraine	State	2022	Ministry of Justice of Ukraine v Political Party “State”	14.06.2022	
Ukraine	Bloc of Volodymyr Saldo	2022	Ministry of Justice of Ukraine v Political Party “Bloc of Volodymyr Saldo”	14.06.2022	
Ukraine	Socialist Party of Ukraine	2022	Ministry of Justice of Ukraine v Political Party “Socialist Party of Ukraine”	14.06.2022	



Country	Political party	Year of banning	Case	Judgement date	Appeals judgement date
Ukraine	Left Opposition	2022	Ministry of Justice of Ukraine v Political Party "Left Opposition"	16.06.2022	
Ukraine	Shariy Party	2022	Ministry of Justice of Ukraine v Political Party "Shariy Party"	16.06.2022	06.09.2022
Ukraine	Union of Left Powers	2022	Ministry of Justice of Ukraine v Political Party "Union of Left Powers"	17.06.2022	29.09.2022
Ukraine	Opposition Platform—For Life	2022	Ministry of Justice of Ukraine v Political Party "Opposition Platform—For Life"	20.06.2022	15.09.2022
Ukraine	Progressive Socialist Party of Ukraine	2022	Ministry of Justice of Ukraine v Political Party "Progressive Socialist Party of Ukraine"	23.06.2022	27.09.2022
Ukraine	Rus United	2022	Ministry of Justice of Ukraine v Political Party "Rus United"	24.06.2022	
Ukraine	Happy Ukraine	2022	Ministry of Justice of Ukraine v Political Party "HAPPY UKRAINE"	05.07.2022	18.10.2022
Ukraine	Communist Party of Ukraine	2022	Ministry of Justice of Ukraine v Communist Party of Ukraine	04.07.2022	
Ukraine	Workers' Party of Ukraine (Marxist-Leninist)	2022	Ministry of Justice of Ukraine v Political Party "Workers' Party of Ukraine (Marxist-Leninist)"	12.07.2022	
Ukraine	Communist Party of Ukraine	1991	Decision of the Verkhovna Rada of Ukraine	30.08.1991	27.12.2001
Ukraine	Party of Regions	2023	Ministry of Justice of Ukraine v Political Party "Party of Regions"	21.02.2023	
Russian Federation	Fair' /Man. Justice. Responsibility/	2019	Ministry of Justice of the Russian Federation v Political Party "Fair' /Man. Justice. Responsibility/"	18.11.2019	
Russian Federation	Against Everyone	2020	Ministry of Justice of the Russian Federation v Political Party "Against Everyone"	18.02.2020	
Russian Federation	Agrarian Party of Russia	2019	Ministry of Justice of the Russian Federation v Political Party "Agrarian Party of Russia"	21.10.2019	



Country	Political party	Year of banning	Case	Judgement date	Appeals judgement date
Russian Federation	Alliance of Greens	2019	Ministry of Justice of the Russian Federation v Political Party "Alliance of Greens"	14.06.2019	13.08.2019
Russia Federation	Born in the Union of Soviet Socialist Republics	2017	Ministry of Justice of the Russian Federation v Political Party "Born in the Union of Soviet Socialist Republics"	21.11.2017	
Russian Federation	Cities of Russia	2019	Ministry of Justice of the Russian Federation v Political Party "Cities of Russia"	13.06.2019	
Russian Federation	Conceptual Party "Unity"	2007	Federal registration service v Political Party "Conceptual Party "Unity"	15.05.2007	
Russia Federation	Defenders of the Fatherland	2020	Ministry of Justice of the Russian Federation v Political Party "Defenders of the Fatherland"	23.03.2020	
Russian Federation	Democratic Choice	2017	Ministry of Justice of the Russian Federation v Political Party "Democratic Choice"	01.12.2017	
Russian Federation	Democratic Legal Russia	2020	Ministry of Justice of the Russian Federation v Political Party "Democratic Legal Russia"	02.06.2020	
Russian Federation	Development of Russia	2020	Ministry of Justice of the Russian Federation v Political Party "Development of Russia"	02.03.2020	
Russian Federation	Eurasian Union	2007	Federal Registration Service v Political Party "Eurasian Union"	13.07.2007	
Russian Federation	Freedom and People's Power	2007	Federal Registration Service v Political Party "Freedom and People's Power"	02.04.2007	05.06.2007
Russian Federation	Good Deeds, Protecting Children, Freedom, Nature, Pensioners, Against Animal Violence	2022	Federal Registration Service v Political Party "Good Deeds, Protecting Children, Freedom, Nature, Pensioners, Against Animal Violence"	02.02.2022	





Country	Political party	Year of banning	Case	Judgement date	Appeals judgement date
Russian Federation	Great Fatherland	2020	Ministry of Justice of the Russian Federation v Political Party "Great Fatherland"	19.03.2020	
Russian Federation	International Party of Russia	2022	Ministry of Justice of the Russian Federation v Political Party "International Party of Russia"	18.05.2022	
Russian Federation	Labour Party of Russia	2020	Ministry of Justice of the Russian Federation v Political Party "Labour Party of Russia"	11.02.2020	
Russian Federation	Labour Union	2020	Ministry of Justice of the Russian Federation v Political Party "Labour Union"	02.03.2020	
Russian Federation	Monarchical Party	2019	Ministry of Justice of the Russian Federation v Political Party "Monarchical Party"	02.12.2019	
Russian Federation	National Course	2020	Ministry of Justice of the Russian Federation v Political Party "National Course"	28.09.2020	
Russian Federation	National Security of Russia	2018	Ministry of Justice of the Russian Federation v Political Party "National Security of Russia"	10.05.2018	
Russian Federation	Native Party	2020	Ministry of Justice of the Russian Federation v Political Party "Native Party"	17.11.2020	
Russian Federation	Party for Development of Regions "Nature and Society"	2007	Federal Registration Service v Political Party "Party for Development of Regions 'Nature and Society'"	26.02.2007	22.05.2007
Russian Federation	Party of Pensioners of Russia	2019	Ministry of Justice of the Russian Federation v Political Party "Party of Pensioners of Russia"	13.06.2019	
Russian Federation	Party of Renaissance of Russia	2008	Ministry of Justice of the Russian Federation v Political Party "Party of Renaissance of Russia"	15.07.2008	
Russian Federation	Party of Spiritual Transfiguration of Russia	2017	Ministry of Justice of the Russian Federation v Political Party "Party of Spiritual Transfiguration of Russia"	05.12.2017	
Russian Federation	Party of Taxpayers of Russia	2017	Ministry of Justice of the Russian Federation v Political Party "Party of Taxpayers of Russia"	09.11.2017	
Russian Federation	Party of Veterans of Russia	2020	Ministry of Justice of the Russian Federation v Political Party "Party of Veterans of Russia"	25.02.2020	



Country	Political party	Year of banning	Case	Judgement date	Appeals judgement date
Russian Federation	Peace and Unity	2017	Ministry of Justice of the Russian Federation v Political Party "Peace and Unity"	26.10.2017	
Russian Federation	People Against Corruption	2020	Ministry of Justice of the Russian Federation v Political Party "People Against Corruption"	16.11.2020	
Russian Federation	People's Party of Russia	2019	Ministry of Justice of the Russian Federation v Political Party "People's Party of Russia"	14.06.2019	
Russian Federation	People's Patriotic Party of Russia	2007	Federal Registration Service v Political Party "Party for Development of Regions "People's Patriotic Party of Russia"	16.04.2007	28.06.2007
Russian Federation	People's Republican Party of Russia	2007	Federal Registration Service v Political Party "Party for Development of Regions "People's Republican Party of Russia"	13.02.2007	
Russian Federation	Republican Party of Russia	2007 (banned missed 2012)	Federal Registration Service v Political Party "Party for Development of Regions "Republican Party of Russia"	23.03.2007	31.05.2007
Russian Federation	Russia of the Future	2020	Ministry of Justice of the Russian Federation v Political Party "Russia of the Future"	21.09.2020	
Russian Federation	Russian Communist Workers' Party—Russian Communist Party	2007	Federal Registration Service v Political Party "Russian Communist Workers' Party—Russian Communist Party"	24.05.2007	31.07.2007
Russian Federation	Russian Party of Peace	2007	Federal Registration Service v Political Party "Russian Party of Peace"	28.03.2007	
Russian Federation	Russian Party of People's Management	2019	Ministry of Justice of the Russian Federation v Political Party "Russian Party of People's Management"	17.01.2019	
Russian Federation	Russian Socialist Party	2020	Ministry of Justice of the Russian Federation v Political Party "Russian Socialist Party"	13.02.2020	16.04.2020
Russian Federation	Russian United Labour Front	2020	Ministry of Justice of the Russian Federation v Political Party "Russian United Labour Front"	27.02.2020	16.07.2020
Russian Federation	Smart Russia	2016	Ministry of Justice of the Russian Federation v Political Party "Smart Russia"	01.12.2016	



Country	Political party	Year of banning	Case	Judgement date	Appeals judgement date
Russian Federation	Social Democratic Party of Russia	2007	Federal Registration Service v Political Party "Social Democratic Party of Russia"	13.04.2007	12.07.2007
Russian Federation	Social Democratic Party of Russia	2019	Ministry of Justice of the Russian Federation v Political Party "Social Democratic Party of Russia"	14.06.2019	
Russian Federation	Social Protection	2007	Federal Registration Service v Political Party "Social Protection"	14.02.2007	
Russian Federation	Social Protection	2015 (rejected)	Ministry of Justice of the Russian Federation v Political Party "Social Protection"	22.10.2015	
Russian Federation	Social Reform Party—Profits from natural resources—To the people	2021	Ministry of Justice of the Russian Federation v Political Party "Social Reform Party—Profits from natural resources—To the people"	18.05.2021	
Russian Federation	Social Solidarity Party	2017	Ministry of Justice of the Russian Federation v Political Party "Social Solidarity Party"	07.11.2017	
Russian Federation	Sports Party of Russia "Healthy Forces"	2019	Ministry of Justice of the Russian Federation v Political Party "Sports Party of Russia "Healthy Forces"	24.01.2019	
Russian Federation	Union of Citizens	2019	Ministry of Justice of the Russian Federation v Political Party "Union of Citizens"	11.06.2019	
Russian Federation	Union of People for Education and Science	2007	Federal Registration Service v Political Party "Union of People for Education and Science"	16.02.2007	26.04.2007
Russian Federation	United Agrarian-Industrial Party of Russia	2017	Ministry of Justice of the Russian Federation v Political Party "United Agrarian-Industrial Party of Russia"	20.06.2017	
Russian Federation	United Party of Disabled People of Russia	2021	Ministry of Justice of the Russian Federation v Political Party "United Party of Disabled People of Russia"	19.02.2021	
Russian Federation	Women's Dialogue	2020	Ministry of Justice of the Russian Federation v Political Party "Women's Dialogue"	05.03.2020	18.06.2020
Russian Federation	Young Russia	2018 (rejected)	Ministry of Justice of the Russian Federation v Political Party "Young Russia"	19.06.2018	



Country	Political party	Year of banning	Case	Judgement date	Appeals judgement date
Russian Federation	Young Russia	2018	Ministry of Justice of the Russian Federation v Political Party "Young Russia"	15.11.2018	
Turkey	Communist Party of Turkey	2009	Office of the Chief Public Prosecutor of the Supreme Court v Communist Party of Turkey	09.07.2009	
Turkey	Conservative Party	1983 (?)	Office of the Chief Public Prosecutor of the Supreme Court v Conservative Party	03.11.1983	
Turkey	Democracy and Change Party	1996	Office of the Chief Public Prosecutor of the Supreme Court v Democracy and Change Party	19.03.1996	
Turkey	Democracy Party	1994	Office of the Chief Public Prosecutor of the Supreme Court v Democracy Party	16.06.1994	
Turkey	Democratic Mass Party	1999	Office of the Chief Public Prosecutor of the Supreme Court v Democratic Mass Party	26.02.1999	
Turkey	Democratic Party	1994	Office of the Chief Public Prosecutor of the Supreme Court v Democratic Party	13.09.1994	
Turkey	Democratic Peace Movement Party	1997 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Democratic Peace Movement Party	22.05.1997	
Turkey	Democratic People's Party	2011 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Democratic People's Party	24.02.2011	
Turkey	Democratic Society Party	2009	Office of the Chief Public Prosecutor of the Supreme Court v Democratic Society Party	11.12.2009	
Turkey	Flag Party	1989 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Flag Party	02.05.1989	
Turkey	Freedom and Democracy Party	1993	Office of the Chief Public Prosecutor of the Supreme Court v Freedom and Democracy Party	23.11.1993	
Turkey	Great Justice Party	2004 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Great Justice Party	14.10.2004	
Turkey	Green Party	1994	Office of the Chief Public Prosecutor of the Supreme Court v Green Party	10.02.1994	



Country	Political party	Year of banning	Case	Judgement date	Appeals judgement date
Turkey	Highway Party	2004 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Highway Party	14.10.2004	
Turkey	Justice and Development Party	2008 (dissolution rejected; half of state aid deprived); 2009 (?)	Office of the Chief Public Prosecutor of the Supreme Court v Justice and Development Party	30.07.2008; 09.07.2009	
Turkey	Justice Party	2004 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Justice Party	14.10.2004	
Turkey	Justice Party of Turkey	2004 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Justice Party of Turkey	14.10.2004	
Turkey	Labour Party	1997	Office of the Chief Public Prosecutor of the Supreme Court v Labour Party	14.12.1997	
Turkey	Nationalist Labour Party	1991 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Labour Party	24.09.1991	
Turkey	New Order Party	1983 (?)	Office of the Chief Public Prosecutor of the Supreme Court v New Order Party	09.11.1983	
Turkey	Our Party	1983 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Our Party	01.11.1983	
Turkey	Party for Rights and Freedoms	2008 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Party for Rights and Freedoms	29.01.2008	
Turkey	Peace Party	1983	Office of the Chief Public Prosecutor of the Supreme Court v Peace Party	25.10.1983	
Turkey	People's Democracy Party	2003	Office of the Chief Public Prosecutor of the Supreme Court v People's Democracy Party	13.03.2003	
Turkey	Peoples' Democratic Party	2021 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Peoples' Democratic Party	31.03.2021	
Turkey	People's Labour Party	1993	Office of the Chief Public Prosecutor of the Supreme Court v People's Labour Party	14.07.1993	



Country	Political party	Year of banning	Case	Judgement date	Appeals judgement date
Turkey	Republican People's Party	1991	Office of the Chief Public Prosecutor of the Supreme Court v Republican People's Party	24.09.1991	
Turkey	Resurrection Party	1997	Office of the Chief Public Prosecutor of the Supreme Court v Resurrection Party	18.02.1997	
Turkey	Revolutionary Socialist Workers Party	2004 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Revolutionary Socialist Workers Party	14.10.2004	
Turkey	Right Path Party	1984 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Right Path Party	28.09.1984	
Turkey	Socialist Party	1988 (rejected); 1992	Office of the Chief Public Prosecutor of the Supreme Court v Socialist Party	10.07.1992	
Turkey	Socialist Turkey Party	1993	Office of the Chief Public Prosecutor of the Supreme Court v Socialist Turkey Party	30.11.1993	
Turkey	Socialist Unity Party	1995	Office of the Chief Public Prosecutor of the Supreme Court v Socialist Unity Party	19.07.1995	
Turkey	Socialist Workers Party of Turkey	2004 (rejected); 2009 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Socialist Workers Party of Turkey	09.07.2009	
Turkey	Supreme Mission Party	1983 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Supreme Mission Party	25.08.1983	
Turkey	Turkey is Happy with Disabled Party	2004 (rejected)	Office of the Chief Public Prosecutor of the Supreme Court v Turkey is Happy with Disabled Party	14.10.2004	
Turkey	United Communist Party of Turkey	1991	Office of the Chief Public Prosecutor of the Supreme Court v United Communist Party of Turkey	16.07.1991	
Turkey	Virtue Party	2001	Office of the Chief Public Prosecutor of the Supreme Court v Virtue Party	22.06.2001	
Turkey	Welfare Party	1998	Office of the Chief Public Prosecutor of the Supreme Court v Welfare Party	16.01.1998	



Country	Political party	Year of banning	Case	Judgement date	Appeals judgement date
Turkey	Workers-Farmers Party	1968	Office of the Chief Public Prosecutor of the Supreme Court v Workers-Farmers Party	15.10.1968	
Spain	Basque Nationalist Action/Basque Patriotic Action	2008	Spanish National Government v Basque Nationalist Action/Basque Patriotic Action	22.09.2008	
Spain	Communist Party of the Basque Lands	2008	Spanish National Government v Communist Party of the Basque Lands	22.09.2008	
Spain	People's Unity; We, the Basque People; Unity	2003	Spanish National Government v People's Unity; We, the Basque People; Unity	27.03.2003	12.02.2004
Spain	Union of Socialist Patriots	2007 (prohibition to create a political party)	Public Prosecutor v Union of Socialist Patriots	22.05.2007	
Belgium	Flemish Bloc	2004	Flemish Concentration, Nationalist Educational Institute, Nationalist Broadcasting Foundation v Centre for Equal Opportunities and the Fight against the Racism, League of Human Rights	09.11.2004	
Belgium	Flemish National Union	1945	N/A	N/A	
Belgium	Party Rexiste	1945	N/A	N/A	
Netherlands	CP '86	1998	Public Prosecutor v the National People's Party/CP '86	18.11.1998	
Netherlands	Dutch People's Union	1978 (prohibited character recognized, but dissolution rejected)	Public Prosecutor v Dutch People's Union	08.03.1978	09.03.1979
Netherlands	National Socialist Movement	1945	Legislation—the Dissolution of Traitorous Organizations Decree	17.09.1944 (in force from 06.04.1945)	



Country	Political party	Year of banning	Case	Judgement date	Appeals judgement date
Netherlands	Nationaal Europeese Sociale Beweging	1955	HR 05-04-1955	14.10.1953	10/15/1954 (cassation 05.04.1955)
France	Action for the Renaissance of Corsica	1975	Conseil d'Etat—3 / 5 SSR	02.02.1977	
France	Barakacity	2020	Conseil d'Etat—N° 445,979	24.09.2021	
France	Federation of National and European Action	1980; 1985 (both decrees cancelled by Conseil d'Etat)	Conseil d'Etat—4/1 SSR; Conseil d'Etat- 3/5 SSR	31.10.1984; 26.06.1987	
France	Identity Generation	2021	Conseil d'Etat—No. 451741	02.07.2021	
France	Muslim Brotherhood Sanabil (The Ears)''	2016	Conseil d'Etat N° 407,220	26.01.2018	
France	Nationalist Youth	2013	Conseil d'Etat—No. 372320	30.12.2014	
France	New Order	1973	Conseil d'Etat 1/4 SSR	09.04.1975	
France	Service of Civic Action	1985	Conseil d'Etat—2/6 SSR	13.02.1985	
France	The French Work	2013	Conseil d'Etat—No. 372322	30.12.2014	
France	Want to Dream	2013	Conseil d'Etat—No. 370306	07.03.2014	
France	Association of Muslims of Lagny-sur-Marne	2016	Conseil d'Etat—No. 401378	15.12.2017	
France	Supras Auteuil 91	2010	Conseil d'Etat—N° 339,293	13.07.2010	
France	The Authentiks	2010	Conseil d'Etat—No. 339257	13.07.2010	
France	The New Association of Boulogne Boys	2008	Conseil d'Etat—N° 315,723	25.07.2008	
Germany	Socialist Reich Party	1952	Federal Constitutional Court—1 BvB 1/51	23.10.1952	
Germany	Communist Party of Germany	1956	Federal Constitutional Court—1 BvB 2/51	17.08.1956	
Germany	National Democratic Party	2003 (rejected); 2017 (rejected)	Federal Constitutional Court—2 BvB 1/01; 2 BvB 1/13	18.03.2003; 17.01.2017	





Country	Political party	Year of banning	Case	Judgement date	Appeals judgement date
Austria	National Socialist Workers Party	1945	Anti-fascist legislation	06.06.1945	
Austria	National Democratic Party	1988	Constitutional Court—B999/87	25.06.1988	
UK	Slaughtneil Republican Club	1967	McEldowney v Forde UKHL 6	18.06.1969	
Bulgaria	United Macedonian Organisation/Ilinden-Pirin	2000	Constitutional Court of Bulgaria—n. 3	29.02.2000	
Croatia	Serbian Democratic Party	1995	Administrative ban: UP/I-006-01/95-01/21, registration number: 515-02-02/3-95-2	27.02.1995	
Czech Republic	Workers' party	2010	Government v Workers' Party	17.02.2010	
Italy	National Fascist Party/ Republic Fascist Party	1943	Administrative ban	02.08.1943	
Italy	New Order	1974	Consiglio di Stato—n. 452	21.06.1974	
Italy	National Vanguard	1976	Administrative ban	08.08.1976	
Latvia	Communist Party of Latvia	1991	Legislative ban	10.09.1991	
Lithuania	Communist Party of Lithuania	1991	Legislative ban	22.08.1991	
Moldova	Communist Party of the Republic of Moldova	1991	Legislative ban	30.08.1991	
Estonia	Communist Party of the Soviet Union	1991	Legislative ban	22.08.1991	
Romania	Communist Party (Nepceceristi)	2008; 2014	Prosecutor's Office v Communist Party (Nepceceristi)	16.05.2008	11.11.2008
Romania	National Dignity Party	2004	Prosecutor's Office v National Dignity Party	31.01.2014	06.01.2015



Country	Political party	Year of banning	Case	Judgement date	Appeals judgement date
Romania	Prisoners and Social Protection Party	2013	Prosecutor's Office v Prisoners and Social Protection Party	28.11.2013	
Romania	Social Democratic Party of Workers	2013	Prosecutor's Office v Social Democratic Party of Workers	17.06.2013	
Romania	The Christian Democratic National Party	2014	Prosecutor's Office v The Christian Democratic National Party	16.01.2014	
Romania	The National Anti-Totalitarian Party	2013	Prosecutor's Office v The National Anti-Totalitarian Party	09.10.2013	
Romania	The Party for the Fatherland	2014	Prosecutor's Office v The Party for the Fatherland	21.05.2014	05.04.2015
Romania	The Romanian Socialist Party	2013	Prosecutor's Office v The Romanian Socialist Party	06.09.2013	
Romania	The Youth Party from Romania	2013	Prosecutor's Office v The Youth Party from Romania	14.06.2013	
Norway	National Gathering	1944	Administrative ban: National Betrayal Ordinance (Landssvikningsordningen)	15.12.1944	
Slovakia	Slovak Commonwealth-National Party	2006	Slovak Supreme Court Decision, no. 3Sž 79/2005	03.2006	
Slovakia	Slovak Commonwealth	2009 (rejected)	Slovak Commonwealth v the Ministry of the Interior of the Slovak Republic	01.07.2009	
Slovakia	People's Party Our Slovakia	2019 (rejected)	Prosecutor General of the Slovak Republic v People's Party Our Slovakia	29.04.2019	
Greece	Communist Party of Greece; National Liberation Front; National Solidarity	1947	Law No 509—legislative ban	27.12.1947	



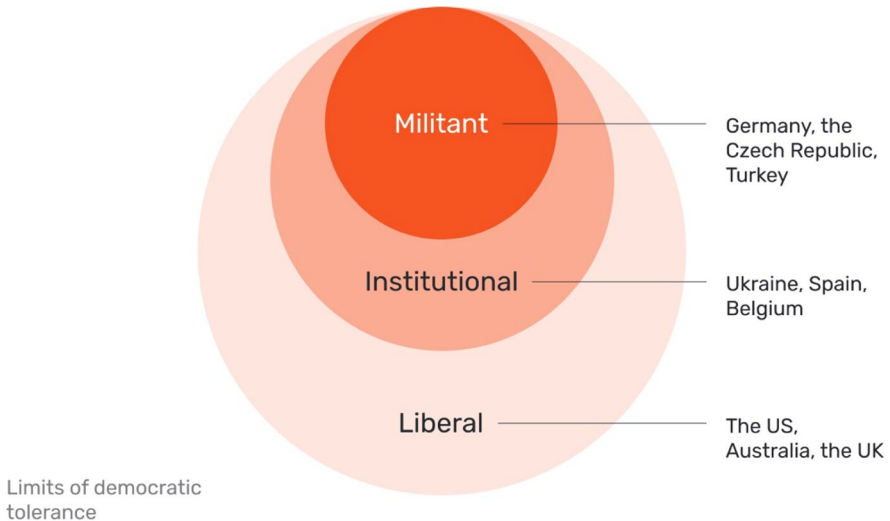
## Appendix 2: Table of countries with the Institutional model and specific reasons to ban

---

Liquidation or independence	Ukraine
Violent means to seize power	Ukraine, Bulgaria, Serbia, North Macedonia
Territorial integrity	Ukraine, Bulgaria
National security	Ukraine, Slovak Republic
Propaganda of war / violence	Ukraine, North Macedonia
Human rights (ethnic, religious hatred etc.)	Ukraine, Bulgaria, Slovak Republic, Serbia, North Macedonia
Public order	Slovak Republic

---

## Appendix 3: The limits of democratic tolerance: graphic model



**Funding** Open access funding provided by European University Institute - Fiesole within the CRUI-CARE Agreement.

**Open Access** This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons licence, and indicate if changes were made. The images or other third party material in this article are included in the article's Creative Commons licence, unless indicated otherwise in a credit line to the material. If material is not included in the article's Creative Commons licence and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.



## References

- Anesi, A., Bagnoli, L. and M. Laine. 2023. Italian Politicians and Big Business Bought into Russian Occupation of Crimea. [online] OCCRP. Available at: <https://www.occrp.org/en/investigations/italian-politicians-and-big-business-bought-into-russian-occupation-of-crimea>.
- Appeal decision on satisfying the administrative lawsuit of the Ministry of Justice of Ukraine on banning the OPFL party, № П/857/8/22. 2022. (Supreme Court) Available at: [https://zakon.rada.gov.ua/laws/show/vc8\\_2780-22#top](https://zakon.rada.gov.ua/laws/show/vc8_2780-22#top).
- Appeal decision on satisfying the administrative lawsuit of the Ministry of Justice of Ukraine on banning the Shariy's Party, № П/857/1/22. 2022. Available at: [https://zakon.rada.gov.ua/laws/show/vb1\\_2780-22#top](https://zakon.rada.gov.ua/laws/show/vb1_2780-22#top).
- Australian Communist Party v Commonwealth ('Communist Party case'). 1951. (High Court of Australia) Available at: <http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1951/5.html> [Accessed 28 Aug. 2023].
- 2BVerfG, 2 BvB 1/13, National Democratic Party II. 2017. (Federal Constitutional Court).
- Bligh, G. 2013. Defending democracy: A new understanding of the party-banning phenomenon. *Vanderbilt Journal of Transnational Law* 46 (5): 1321.
- Bourne, A. 2010. Political Parties and Terrorism: Why ban Batasuna? Elections, Public Opinion and Parties Annual Conference.
- Bourne, A. 2013. Why ban Batasuna? Terrorism, political parties and democracy. *Comparative European Politics* 13 (3): 325–344.
- Bourne, A.K. 2018. *Democratic Dilemmas*. Routledge.
- Bourne, A.K., and F. Casal Bértoa. 2017. Mapping 'Militant Democracy': Variation in Party Ban Practices in European Democracies (1945–2015). *European Constitutional Law Review* 13 (2): 221–247.
- Capoccia, G. 2001. Defending democracy: Reactions to political extremism in inter-war Europe. *European Journal of Political Research* 39 (4): 431–460.
- Casal Bertoa, F., and A. Bourne. 2016. Prescribing democracy? Party proscription and party system stability in Germany, Spain and Turkey. *European Journal of Political Research* 56 (2): 440–465.
- Constitutional case No. 3 of 1999. 2000. Decision of the Constitutional Court of Bulgaria No. 1 of February 29, 2000 (Constitutional Court of Bulgaria).
- David, R. 2018. Lustration in Ukraine and Democracy Capable of Defending Itself. In *Transitional Justice and the Former Soviet Union: Reviewing the Past, Looking toward the Future*, ed. C.M. Horne and L. Stan, 135–154. Cambridge: Cambridge University Press.
- Decision № 9-p/2019. 2019. (Constitutional Court of Ukraine).
- Decision № 20-rp/2001. 2001. (Constitutional Court of Ukraine).
- Euskal Herrialdeetako Alderdi Komunistak / Communist Party of the Basque Lands ban. 2008. (Supreme court of Spain).
- Brandmann, F. 2022. Radical-Right Parties in Militant Democracies: How the Alternative for Germany's Strategic Frontstage Moderation Undermines Militant Measures.
- Fedoriv, I. 2023. Pro-Russian Parties Went Down: What Kremlin Projects has the Court Banned? Pravda. [online] Available at: <https://www.pravda.com.ua/articles/2022/06/30/7355630/> [Accessed 28 Aug. 2023].
- Fox, G., and G. Nolte. 2000. Intolerant democracies. In *Democratic governance and international law*, ed. G. Fox and B. Roth. Cambridge: Cambridge University Press.
- Hawke, A. 2019. Australian Democracy Strengthened as Foreign Donations Banned. [online] Minister Hawke's office. Available at: <https://www.smos.gov.au/media-release/2019/01/14/australian-democracy-strengthened-foreign-donations-banned> [Accessed 28 Aug. 2023].
- Herri Batasuna v. Spain. 2009. App. 25803/04, 25817/04 (ECtHR).
- Intelligence and Security Committee of Parliament, Extreme Right-Wing Terrorism. 2022. [online] Intelligence and Security Committee of Parliament. Available at: [https://isc.independent.gov.uk/wp-content/uploads/2022/07/E02710035-HCP-Extreme-Right-Wing-Terrorism\\_Accessible.pdf](https://isc.independent.gov.uk/wp-content/uploads/2022/07/E02710035-HCP-Extreme-Right-Wing-Terrorism_Accessible.pdf).
- Issacharoff, S. 2015. *Fragile democracies: Contested power in the era of constitutional courts*. New York: Cambridge University Press.
- Judgment of August 17, 1956—1 BvB 2/51. 1956. (Federal Constitutional Court).
- Judgment of March 27, 2003 (HB and successors ban), STS 2133/2003. 2003. (Supreme Court of Spain).
- Judgment of October 23, 1952 – 1 BvB 1/51. 1952. (Federal Constitutional Court).



- Judgment of September 22, 2008 (Eusko Abertzale Ekintza—Acción Nacionalista Vasca ban), STS 4581/2008. 2008. (Supreme Court of Spain).
- Judgment Pst 1/2009. 2009. (Supreme Administrative Court).
- Laine, M., Anesi, C., Bagnoli, L. and T. Tkachenko. 2023. Kremlin-Linked Group Arranged Payments to European Politicians to Support Russia's Annexation of Crimea. [online] OCCRP. Available at: <https://www.occrp.org/en/investigations/kremlin-linked-group-arranged-payments-to-european-politicians-to-support-russias-annexation-of-crimea?fbclid=IwAR2evFQ38-E4CrFhKcrr5FyGo5q7nuSyD39ISH9YIGWceUnuCNaoHLoTxdQ> [Accessed 26 Sep. 2023].
- Cernic, Jernej Letnar. National Security—a Trump Card? The European Court of Human Rights decisions in Herri Batasuna and Batasuna v. Spain, Etxebarria and Others v. Spain and Herritaren Zerrenda v. Spain, EUI MWP, 2010/02 - <https://hdl.handle.net/1814/13343>
- Little, H.A. 2019. Government to ban foreign donations. [online] The Beehive. Available at: <https://www.beehive.govt.nz/release/government-ban-foreign-donations> [Accessed 28 Aug. 2023].
- Malkopoulou, A. 2021. Greece: A procedural defence of democracy against the golden dawn. *European Constitutional Law Review* 17 (2): 177–201.
- Malkopoulou, A., and L. Norman. 2017. Three models of democratic self-defence: Militant democracy and its alternatives. *Political Studies* 66 (2): 442–458.
- McEldowney v Forde. 1969. (House of Lords).
- Mareš, Miroslav. 2012. Czech militant democracy in action. *East European Politics and Societies* 26 (1): 33–55.
- Molier, G., and B. Rijpkema. 2018. Germany's new militant democracy regime: National democratic party II and the German federal constitutional court's 'potentiality' criterion for party bans. *European Constitutional Law Review* 14 (2): 394–409.
- Pedahzur, A. 2004. The defending democracy and the extreme right: A comparative analysis. In *Western democracies and the new extreme right challenge*, 1st ed., ed. E. Roger and C. Mudde, 216. London: Routledge.
- Postanova (ruling) on Russian Bloc party—case No. 826/4717/14. 2014. (District Administrative Court of the City of Kyiv) Available at: <http://reyestr.court.gov.ua/Review/38722605>.
- Postanova (ruling) on Russian Unity party—case No. 826/4716/14. 2014. (District Administrative Court of the City of Kyiv) Available at: <http://reyestr.court.gov.ua/Review/38550801>.
- Postanova (ruling) on the Communist Party of Ukraine (renewed)—case No. 826/15406/15. 2015. (District Administrative Court of the City of Kyiv) Available at: <http://reyestr.court.gov.ua/Review/51867526>.
- Postanova (ruling) on the Communist Party of Workers and Peasants—case No. 826/15405/15. 2015. (District Administrative Court of the City of Kyiv ) Available at: <https://reyestr.court.gov.ua/Review/51867521>.
- Prosecutor General's Office of Ukraine. 2016. The Office of the Prosecutor General of Ukraine initiated criminal proceedings against Serhii Aksyonov under Art. 109 of the Criminal Code of Ukraine (Actions aimed at forceful change or overthrow of the constitutional order or take-over of government). [online] Available at: [https://web.archive.org/web/20160315224236/https://www.gp.gov.ua/ua/news.html?\\_m=publications&\\_c=view&\\_t=rec&id=135126](https://web.archive.org/web/20160315224236/https://www.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=135126) [Accessed 1 Mar. 2024].
- Refah Partisi (The Welfare Party) and Others v. Turkey. 2003. (ECtHR ) Available at: <http://hudoc.echr.coe.int/eng?i=001-60936> [Accessed 28 Aug. 2023].
- Tkachenko, T., and M. Laine. 2023. How a Russian Influence Group Infiltrated Cypriot Party Politics. [online] OCCRP. Available at: <https://www.occrp.org/en/investigations/how-a-russian-influence-group-infiltrated-cypriot-party-politics> [Accessed 28 Aug. 2023].
- Trochev, A. 2003. Ukraine: Constitutional court invalidates ban on communist party. *International Journal of Constitutional Law* 1 (3): 534–540.
- Ukhvala (order). 2014. (District Administrative Court of the City of Kyiv) Available at: <http://reyestr.court.gov.ua/Review/38196250>.
- Ukhvala (order). 2015. (District Administrative Court of the City of Kyiv) Available at: <http://reyestr.court.gov.ua/Review/47843170>.
- Yazar et al v. Turkey. 2002. Apps. 22723/93, 22724/93, 22725/93 (ECtHR).



**Bohdan Bernatskyi** is a Max Weber Fellow at the European University Institute. He is also a Senior Lecturer at Kyiv-Mohyla Academy, where he specializes in contemporary problems of international law. Mr. Bernatskyi's research mainly focuses on the dynamics of international sanctions and the prohibition of political parties. In 2019, he successfully defended his PhD thesis, which examined the Ukrainian model of the prohibition of political parties at Kyiv-Mohyla Academy.

