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MIGRATION CHALLENGES FOR THE EU'S DEMOCRATIC RESILIENCE

MIGRACYJNE WYZWANIA DLA REZYLIENCJI DEMOKRATYCZNEJ UE

Abstract

Migration is one of the external challenges affecting the resilience of the democratic system at different levels: the balance of power and trust in institutions; political parties; civil society; the political community formed on the foundation of a common identity and shared values. The purpose of the article is to present the impact of migration challenges on democratic resilience in the EU in the context of the new Pact on Migration and Asylum, which is positioned in the public debate between its supporters, who postulate consistent implementation of its provisions, and opponents who want to overcome it with more restrictive policies designed on the externalization model. Using the method of systems analysis and institutional-legal analysis, it was sought to resolve to what extent the Pact was designed to equip the EU system with all forms of resilience: resistibility, adaptability, and transformability within its multi-level structure.

Keywords: resilience, democracy, Pact on Migration and Asylum, migrations.

Introduction

E. Feller, former Assistant High Commissioner of the United Nations Refugee Agency, stated in 2015 that one of the significant tests of the strength and resilience of a democratic system – understood as an open and accountable government based on tolerance, respect for human rights and the rule of law – is how it manages the global flow of people (Feller, 2015). In this context, restrictions on the rights of migrants that violate their fundamental rights and restrictive migration policies can be seen as a form of democratic decay (Smet & Stoyanova, 2022).

Migration, for many years now, has remained at the center of election campaigns and party clashes, as well as social polarization favoring populism. The last-minute adoption of the Pact on Migration

and Asylum before the 2024 European Parliamentary elections has not caused it to fall off the electoral campaign pedestal. All European groupings have identified EU migration management as one of the most urgent priorities for the next term.

Migration can be seen as affecting the state of democracy, especially due to social polarization and populist tendencies (Sisk, 2017). However, it should be emphasized that migration pressure remains only one of several causative factors of the spread of populism and the accompanying crisis of democracy. The aim of this article is to present the impact of migration challenges on democratic resilience (understood as the resilience of the democratic system) in the context of the new Pact on Migration and Asylum, which was adopted by the European Parliament and approved by the Council shortly before the European elections.[1] The document, which has been in the works since 2020, has gained both supporters and opponents. It is worth emphasizing that in the political dimension, its provisions were opposed not only by extreme groups, but also by the mainstream left and right. The aim of the Pact itself is to provide a more effective, and fair framework for registering and processing asylum applications. Such a goal is undoubtedly to strengthen the democratic resilience of the EU system and to influence the unification of standards. On the other hand, criticism of the Pact concerns insufficient concern for the rights of asylum seekers or selective solidarity.

In a dynamically changing international environment, the EU faces the challenge of ensuring the resilience of its democratic values. The fundamental issue is the recognizing the interdependence between migration challenges and the weakening of liberal democracy. Can the new Pact be treated as a factor contributing to the gradual undermining of migrants' rights, rather than a source of resilience of democratic values, or on the contrary – as a factor supporting their resilience? This article attempts to answer these questions by using the system analysis method, examining the multi-level nature of democratic resilience, and institutional and legal analysis to examine the impact of the regulations of the new Pact on Migration and Asylum on its individual levels.

[1] The author seems to adopt a politically correct understanding of policies supporting immigration as democratic, and policies opposing it as "populist", threatening democracy. This is part of the language prevalent among the left-liberal establishment, which should not be used in ideology-free scientific publications (note of editors board).

Concept of multi-level democratic resilience

Resilience is a concept that has attracted the attention of many researchers from various scientific disciplines in recent years: psychology, sociology, natural sciences and increasingly political science. During the G7 summit in Elmau, which took place on 27 June 2022, the leaders of the countries led by Germany, which then held the presidency of the G7, adopted the Resilient Democracies Statement. The President of the European Council Charles Michel and the President of the European Commission Ursula von der Leyen were also invited to the talks. The leaders unanimously spoke in favour of close cooperation to strengthen the resilience of their democratic systems and to develop fair and sustainable solutions to global problems in turbulent times.

The term resilience, originally associated with the physics of materials, described the ability of 'materials to return to their original state after being temporarily deformed' (Bröckling, 2017: 1). More universal definitions identify resilience with the ability of an entity, object or system to resist external and internal disruptions, impositions and shocks without giving up the basic structures and functions that constitute its essence. Resilience enables the use of change for the transformation and further development of the structures of the system. As a concept in political science, resilience is both an analytical category that seeks to capture empirically the fundamental dilemma of politics, namely 'how it is' (what resilience potential does a given democratic system have) and, on the other hand, postulates normative visions of 'how it should be' (how to establish the desired state of resilient democracy?) (Merkel, 2023). Resilience is the property of a social system to cope with complex challenges and crises, survive them, and recover from them (Sisk, 2017: 37). In connection with this conceptualization, three key forms of resilient structures should be indicated:

1) resistability – the ability to resist, survive disruptive events, and regenerate the structure;
2) adaptability – understood as the ability to adapt to changing conditions and learn from previous experiences;
3) transformability – the ability to transform, i.e. to undergo long-term transformations and use changing conditions for further development and reorganization.

Democratic resilience should be analyzed through the prism of the system's ability to maintain the functions and principles of democratic governance despite attempts by various undemocratic forces to damage or weaken the structures that constitute the essence of

democracy. Nowadays, democracy, or liberal democracy, should be treated as a complex and complicated political system encompassing procedures, institutions, law, constitutionalism, parliamentarism, the idea of representation, political parties, etc. The more complex this system becomes, the more criticism it encounters regarding the democratic deficit. In turn, the democratic deficit itself is treated as a progressive process of alienation of power structures from citizens and insufficient involvement of society in public affairs. This system is associated with a specific order built on two key values: freedom and equality. This order, in turn, recognizes the priority of human rights, pluralism, tolerance, individualism (Gawin, 2007: 120-121). A democratic system, in order to become resilient to internal and external shocks and stressors, must have the capacity to continuously absorb new knowledge in order to prepare for new challenges; to adapt quickly to changing conditions, but without falling into regime change or abandoning the values, principles, functions and norms that define democracy (Merkel, 2023). It must therefore be an open system, constantly communicating with its environment, drawing information and energy from it in the form of demands and support from its own society, political elites and the international environment (Almond & Powell, 1978: 11), but also demands from relevant decision-making participants (within-puts) (Easton, 1965: 354). Closing the system to external stressors can lead to its damage, inhibition of its development or regression, and the acceptance of achievements and statements that are inadequate to the contributions, which not only do not strengthen democratic resilience, but can lead to its "deformation".

However, if we treat democratic resilience as a multi-level system consisting of the following levels: balance of power and trust in institutions; activity of political parties; civil society; political community based on a common identity, then the input to this system will be the basic function of resilience, which is the absorption of knowledge (including on the demands related to migration pressure) in order to understand future challenges; effective problem-solving or fair and democratic decision-making. The intra-system conversion will result in three forms of resilience:

1) survival of democratic structures and liberal values;
2) adaptation to new conditions;
3) strengthening of democracy through development (Merkel, 2023).

Such an approach does not exclude the dynamic nature of democratic resilience. Perhaps one of the most important dilemmas is whether there

is one democratic resilience for all challenges and all times or does its development depend on the nature of centripetal and centrifugal stressors?

Migration challenges – centripetal threats to democratic resilience and balance of power and trust in institutions

Migration affects four basic levels of the political system structure, which remain institutionally and procedurally interdependent. The specificity of the interactions of individual actors occurring at these levels determines the weakening or strengthening of the democratic resilience of the entire system, as democratic or anti-democratic processes can permeate other levels. This does not mean that migration, as centripetal stressors, putting the democratic system under pressure and negatively affecting one level will "infect" others. At other levels, centrifugal forces strengthening democratic resilience may be activated. Such collision points, where anti-democratic tendencies simultaneously strengthen the democratic potential of the system by activating some of its dormant elements, can be referred to as the paradox of democracy. An example of such a paradox in the context of migration challenges may be the strengthening of social engagement and increased voter turnout of citizens. Social mobilization and increased political participation are undoubtedly the foundations of democracy, however, if it is underpinned by extreme populism, and as a result, increasing support for nationalist attitudes, this may lead to democratic backsliding.

The first level of multi-level democratic resilience refers to the constitutional protection of democracy through the separation of state power into three branches and such a decision-making process that strengthens citizens' trust in democratic institutions. Horizontal institutional accountability understood as a system of checks and balances between democratic institutions of power is a feature of long-term democracy (Merkel, 2023: 5). The EU political system combines the features of a state system with the features of an international organization. However, the inclusion of individual states in the structures of supranational cooperation has fostered an increase in the role of the executive and the voice of individual governments in the forum of organizations such as the G7; G20 or even the EU, which was particularly visible in crisis situations, when we observed an intergovernmental turn and the marginalization of national parliaments. Decisions taken during the migration and refugee crisis, e.g. Chancellor A. Merkel's decision to suspend the Dublin mechanism and not preceded

by a parliamentary debate, were justified by time pressure and the need for urgent action. Although the organization of the decision-making process should be based on basic democratic norms even in crisis situations, sensitive political issues such as migration policy favor the abandonment of the participatory input of parliaments and citizens in time-consuming decision-making processes in favor of increasing the role of governments in this area (Diermeier & Niehues, 2021).

Increased migration flows affect democratic institutions in destination countries in several fundamental ways. First, they strain the capacity of democratic institutions to effectively integrate migrants into the society of the receiving country, but they also undermine, especially through the voice of certain social groups and political parties, the extent to which governments of these countries should enable migrants to participate in political life (Ebead & McDonough, 2017). At the EU level, the preferences of these groups, expressed especially in the European Parliament, but also directly by ministers and heads of government and state in intergovernmental institutions, undermine the way in which binding decisions on migration and asylum policy are taken by qualified majority.

Public debate and concerns about migration, and in particular whether multiculturalism can work in every society, show social polarization and the dilemmas of decision-makers in searching for the right answers. In 2015, when the number of asylum applications in the EU rose rapidly to 1.28 million, the EU faced one of the largest migration and refugee crises in history. Due to the lack of uniform rules and regulations at EU level and the lack of a coherent approach to the crisis, countries responded individually - on the one hand by suspending the provisions of the Dublin Conventions in force, and on the other by reintroducing internal border controls. Long-term and intensified migration flows, which turned into a global crisis, which exacerbated polarization among Member States regarding the relocation of refugees and fair burden-sharing.

McLaren's research to determine the impact of migration on the level of democracy focused primarily on three areas:

1) public concerns about immigration;
2) the scale of migration;
3) integration policies and the way migration is managed (McLaren, 2010).

These areas are closely linked within the first dimension of democratic resilience, because public perceptions of migration change depending on

whether the integration policy of immigrants is effective and supports social cohesion or whether it challenges national identity. Society supports decision-makers in this respect only when citizens trust that democratic institutions of government are able to cope with migration challenges. In turn, integration policies enforced by democratically elected representatives of decision-making centers affect the increase or decrease of political trust in democratic institutions and certain attitudes towards migrants (Miller & Listhaug, 1990: 358; Weldon, 2006). Also, the pace and scale of migration flows, influencing the overall level of migration in a given country, can influence citizens' belief in the lack of capacity of democratic political institutions to effectively manage migration. In a situation where they are unable to effectively cope with migration pressure, trust in political institutions decreases and the conviction that multiculturalism does not work in every society increases, which affects the growth of negative attitudes towards immigrants themselves.

Political parties

Migration has been at the centre of public debate for many years, especially during election campaigns. In some Member States, such as France, Germany and Poland, parties opposing the liberalization of migration policy and calling for the implementation of procedures restricting the entry of immigrants have gained considerable support from the public. This was particularly visible in 2015 in the high results of the Polish Law and Justice party (PiS), which opposed EU mechanisms based on mandatory relocation quotas; the Alternative for Germany (AfD) in 2017; and the French National Rally (RN) in the parliamentary elections in 2017 and the victory of this party in the European Parliament elections in 2024. Trends related to the growth of support for anti-immigrant groups were also noted in 2015 in Austria, Denmark, Finland and Switzerland. Nationalist and Islamophobic street movements, such as the French Les Identitaires or the English Defence League, fuelled by the migration and refugee crisis, have also confirmed the validity of their mission and increased their protest activity (Ebead & McDonough, 2017: 217).

Moreover, due to fear of losing support, centre-liberal parties are increasingly adapting their programmes to the rhetoric of parties opposed to migration, as exemplified by the opposition of the Polish Civic Platform (PO) to the new Pact on Migration and Asylum. In 2015, this party pursued a policy open to solutions of solidarity-based burden-

sharing and the resulting refugee relocation quotas, but these declarations were withdrawn by the PiS government, which won the parliamentary elections. The stoking of anti-immigrant sentiments by mainstream parties indicates a real threat from migration and further shapes the negative attitude of public opinion.

Social concerns about migration can be analyzed on three basic levels: security; culture; social welfare and employment. Socio-economic concerns are based on the belief that access to the labor market open to foreigners with lower salary expectations or excessive social benefits will be limited. Cultural issues are related to the potential threat to national identity, while security concerns result from the increased threat of terrorism, which is associated by citizens with increased migration flows. Such a perception of migration may in turn strengthen the restrictive rhetoric of politicians fighting to maintain power. However, it is worth emphasizing that even a preservative policy towards migration may suggest that immigrants are a problem for the functioning of the political system or that it is unable to absorb new groups of foreigners, especially when such preservative policy is demonstrated not only by right-wing populist but also more liberal groups. It can therefore be stated that the line regarding more restrictive migration policy is moving to the middle of the party spectrum.

Migration policies should provide access to impartial assessments of asylum applications and be based on the rule of law. Democratically elected governments have the right to create and enforce immigration laws. Furthermore, even immigration policies aimed at restricting entry can be implemented in accordance with fundamental rights if governments ensure an adequate level of transparency and respect for human rights (Ebead & McDonough, 2017: 233). The mere existence of populist parties in the party spectrum does not undermine democracy as long as they remain loyal to the democratic system. On the other hand, if they become anti-democratic and undermine an order based on political and social pluralism, they pose a major threat to democratic resilience. Therefore, establishment parties that are loyal to democratic values must carefully navigate between two extremes: open exclusion and uncritical acceptance, in order not to fall into the trap of anti-democratic rhetoric.

While mild populism, which is used by many parties, cannot be automatically treated as anti-democratic, far-right populism cannot be reconciled with the values of liberal democracy, which is based on openness and pluralism. As W. Kornhauser argued, populism is a denial

of pluralism and a pursuit of uniformity in the face of social differentiation (Kornhauser, 1959). In turn, P. Taggart pointed out that populism recognizes an internally homogeneous community as a response to various types of social crises (Taggart, 2000). The rise to power of populists proclaiming anti-immigration postulates also radicalizes that part of society that did not have a well-established attitude towards immigration.

Strong and diverse civil society

A developed civil society is crucial to building a consolidated democracy resistant to antidemocratic shocks. It includes voluntary, independent, and at least to some extent self-sufficient and self-generating organized groups and institutions. An important element of civil society are non-governmental organizations, but also independent media, universities, think tanks, and social and religious groups. To become a real part of civil society, they must meet the criteria of respect for the law, including the rights of individuals and various groups to express their views and pursue diverse interests, and this in turn links the concept of what is 'civic' with the requirement of tolerance and accommodation to pluralism.

Civil society has several essential functions. The first is to limit and control the power of the state in order to identify any abuse of power and increase access to information. Supporting democracy in civil society also involves exposing corruption practices among public officials and lobbying for reforms of good governance. Another function is related to promoting participation in political life, through civic education; supporting interest in public affairs and encouraging participation in elections. Civil society organizations can also develop a system of values based on compromise, tolerance and understanding of different points of view. Democracy cannot be considered resilient if civil society is not treated as an arena for expressing opposing views and pursuing the diverse interests of its members (Diamond, 2004).

Migration issues, which have dominated public discourse for many years, reinforce the subcultural segmentation of society. As W. Merkel emphasizes, political associations of civil society are increasingly being created within their own moral environments, their own social classes or sexual identities (Merkel, 2023: 6). The current structure and dynamics of civil societies are dominated by an exclusionary and polarizing narrative, which weakens democratic resilience at its very foundations. These divisions are reinforced not only by populist forces

spreading their ethnic nationalism, but also by left-liberal forces, which, by shaping their image as progressive and moral, try to exclude opposing 'others' from public debate.

Identity and common values

Two ways of understanding European identity can be distinguished:

1) the EU as a cultural community of values that make up 'cultural identity';

2) the EU as a political community of democratic practices that make up 'political identity' (Prutsch, 2017).

In the first approach, the bearer of European identity are common values that originate from a common cultural and historical heritage. Values are the glue that holds the community together, at the same time creating a point of reference for collective political action. A well-established collective identity of a supranational community based on values shared by the Member States is crucial for the success of European integration. According to Article 2 TEU, the European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society based on pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. The EU is a community of democracies, i.e. a union of states of law with a democratic system, respecting human rights and freedoms, but also a system externally authenticated by states representing various national interests. A system that is permanently constructed, and therefore its final shape cannot be clearly defined, which allows for the introduction of post-crisis reforms, but also threatens to undermine its functioning if they prove ineffective.

In the second approach, the concept of the EU as a political community emphasizes the importance of political identity. It is based on constitutional patriotism, which assumes strengthening ties not through ethnic or cultural identification, but through attachment to liberal-democratic institutions. The identification of the community with these institutions can only be realized through a democratic process through interaction in the public sphere providing the necessary space for the expression of political preferences. The effect of this process should be a democratic political culture firmly rooted in institutional guarantees of political competition and participation, created in opposition to closed national cultures defined by ethno-cultural values.

From the very beginning, the European integration project was guided by the goal of strengthening the sense of belonging to Europe. However, it was not until 1973 that steps were taken to adopt the Copenhagen Declaration on European Identity. It was to be based on common values and principles: representative democracy, the rule of law, social justice and respect for human rights. In recent years, strengthening European identity and making democratic resilience dependent on it has gained in importance due to the numerous crises that the EU has had to face, which have undermined its political legitimacy to make decisions across national borders and its ability to overcome challenges. The financial and migration/refugee crises have initiated a debate on the EU's internal solidarity and on the extent to which it should correspond to unconditional solidarity, rather than flexible solidarity. They have reinforced polarization in terms of the extent to which acceptance of common European values requires the recognition of reciprocity of rights and obligations. The Brexit referendum has questioned the project of European integration as a process that is not subject to backsliding. The 2016 US presidential election also questioned the democratic resilience of the 'Western model'. In addition, rising populism and declining trust in the establishment following the migration and refugee crisis have reinforced the political and institutional crisis in the EU and the common political identity based on attachment to liberal democratic institutions.

The integration of migrant groups into European societies is all the more difficult if the identities existing within them (nationalist, religious, ideological) adopt mutually intolerant attitudes and do not develop a sense of belonging to the broader state community. This sense of belonging, as one of the foundations of a common identity, can only be strengthened in societies in which committed institutions operating in accordance with democratic values ensure a fair distribution of goods and equal life opportunities (Merkel, 2023: 8).

Pact on Migration and Asylum as a centrifugal threat or chance to multi-level democratic resilience?

EU migration policy should be designed to increase public trust in the ability of governments and supranational institutions to manage migration, thereby strengthening trust in democratic structures. Governments themselves should also engage in a democratic dialogue on migration and not succumb to populist tendencies and counteract

undemocratic public attitudes towards both political institutions and asylum seekers (Ebead & McDonough, 2017: 234).

After overcoming the pandemic crisis, which had halted migration flows, and after the outbreak of the war in Ukraine, the EU once again found itself facing an increase in illegal migration and an increase in the number of people seeking protection on its territory. The total number of asylum applications in 2023 amounted to about one million. In turn, after Russia's invasion of Ukraine, about 4 million Ukrainians settled in EU countries (González Enríquez, 2024). Other challenges were related to the use of immigration by Belarus government as a political weapon, which led to many tragedies, including the murder of a Polish soldier on the border. In such conditions, discussions on the new Pact took place in a climate of acceptance of European parties and public opinion for more restrictive asylum policies and the regulation of illegal immigration, but also greater voter support for nativist parties. Even mainstream parties are moving towards demands for greater control, tightening of migration and asylum policies and restrictions on the entry of immigrants. This is not aimed at completely and uncompromisingly blocking the interests of refugees, but at introducing a more prudent asylum policy. On the one hand, taking into account the systemic possibilities for accepting refugees and guaranteeing them appropriate conditions. On the other hand, to strengthen the security of one's own citizens. This in turn is unacceptable to left-wing parties and non-governmental organizations, for whom solidarity and rights of asylum seekers are the determinants of a democratic system. On the other hand, an important internal goal, the implementation of which would undoubtedly strengthen democratic resilience within the EU, was to establish similar asylum procedures and standards in all member states, to define solidarity and division of responsibility so that the issues of managing people arriving illegally and seeking asylum cease to be the main axis of tensions between member states. However, achieving this goal remains a challenge.

The Pact on Migration and Asylum is a set of legal acts adopted on 10 April by the European Parliament, regulating at EU level the management of migration in the long term and establishing a common asylum system, which, according to the declarations of the European Commission, is rooted in European values and international law. The draft Pact, together with five legislative proposals for the reform of EU asylum rules, was presented by the European Commission on 23 September 2020.

The Pact on Migration and Asylum, which was initiated in response to the failure of the EU system during the 2015 crisis, can be considered primarily within the framework of the transformability process as the ability of the EU system to transform post-crisis, but it also has the potential to strengthen resistibility and adaptability, especially in the context of the Regulation of the EP and of the Council on responding to situations of crisis and force *majeure* in the field of migration and asylum. The experience of the 2015 crisis confirmed that even an open attitude of decision-makers oriented towards liberal policies towards immigrants can weaken the resilience of democratic structures. The lack of limits on the number of permits to cross the border and being guided solely by humanitarian issues as determinants of democracy can lead to the failure of the absorption system and a decrease in citizens' trust in the government's effectiveness, and consequently also threaten fundamental rights. When pointing out the main elements of multi-level democratic resilience, one cannot ignore the fact that the Pact was voted democratically by a majority in the EP, although it was not a clear majority: the Regulation on asylum and migration management, the Parliament adopted by 322 votes in favour, 266 against, with 31 abstentions.

The Regulation addressing situations of crisis and force *majeure* in the field of migration and asylum was adopted by the Parliament by 301 votes to 272, with 46 abstentions. It is also clear that the new regulations have divided the interests of MEPs, democratically elected in the Member States. The most difficult to negotiate were three interconnected regulations: on asylum and migration management; on the common asylum procedure; and on situations of crisis and force *majeure*. Southern European countries called for greater European solidarity; Eastern European countries (mainly Poland and Hungary) opposed accepting a proportional quota of asylum seekers. In turn, the wealthiest northern countries, which are potential destination countries for immigrants, pressed for an extension of the period during which the country of first entry remains responsible for such immigrants. At the same time, it is not possible to point to opponents only on one side of the political scene, because the opponents of the Pact included both far-right and far-left parties, but also those belonging to the mainstream right and left, as well as those declaring themselves in the centre.

The Pact affects each of the elements of multilevel democratic resilience to a varying degree. According to the first of the above-mentioned acts of the Pact (on asylum and migration management), the

establishment of a common framework for the management of migration and asylum is to meet the objectives of ensuring solidarity and fair sharing of responsibility between Member States and ensuring a policy in line with fundamental rights, conditioned by access to international protection and appropriate reception conditions. Also, the policy on readmission in the case of 'mixed arrivals' (people who need protection and those who do not) is to be based on partnerships with countries of origin, which, according to the document, must be based on human rights, the rule of law and respect for the common values of the Union. There is therefore no doubt that, despite the strong emphasis on strengthening return procedures and increasing the number of safe returns to countries of origin, the priority of the Pact is to be the proper verification of the validity of the asylum application and the protection of fundamental rights.

In order to strengthen the potential for resistance, especially in the context of strengthening citizens' trust in democratic institutions and the capacity of asylum, reception and migration systems to cope with migratory pressures, the Pact indicates that Member States should have the necessary human, material and financial resources and infrastructure to effectively implement asylum and migration management policies. To this end, Member States should develop their national strategies based on a common template prepared by the Commission. The Commission has acquired new implementing powers under the Pact, including the possibility of taking an implementing decision on which Member State is under migratory pressure; is at risk of migratory pressure or is facing a serious migratory situation. In making such an assessment, the Commission takes into account a number of qualitative and quantitative factors, including: the number of applications for international protection; irregular border crossings; return decisions issued and executed; transfer decisions issued and executed; specificities resulting from the geographical location of the Member States.

The Pact emphasizes the priority of respecting the fundamental rights of migrants, including respect for and protection of human dignity, the prohibition of torture and inhuman or degrading treatment or punishment, respect for private and family life, the principle of the best interests of the child, the right to asylum and protection in the event of removal, expulsion or extradition. However, some provisions may indicate its less humanitarian nature in terms of the protection of fundamental rights. This concerns, above all, the implicit recognition that

the choice between the different types of solidarity included in the Pact, i.e. relocation; financial contributions; alternative solidarity measures, e.g. by strengthening the protection of external borders, guarantees a "balance of efforts between Member States". Equating accepting refugees and providing them with the necessary medical, accommodation and social assistance with an alternative financial contribution provided for not accepting a refugee may be seen as a denial of liberal values. In turn, on 9 April 2024, 50 civil society organizations (including Amnesty International, Caritas Europa, Europe Cares, etc.) opposed the adoption of the Pact, which in their opinion will have a devastating impact on the European asylum system and give the green light to abuses such as racial profiling, automatic detention or pushbacks.

Moreover, the provision that, in order to facilitate the decision-making process, the Commission proposal for a Council implementing act establishing the Annual Solidarity Pool should not be made public until it has been adopted by the Council raises many questions about the transparency of the decision-making process.

The potential for adaptability of the Pact is taken into account in the case of the solidarity response, which, however, in accordance with the new regulations, although mandatory, should be designed individually in each case, so that it is adapted to the needs of the given Member State. Such a mechanism should provide for different types of solidarity measures of equal value and should be flexible and able to adapt quickly to the changing nature of the migration challenges. In order to strengthen the coordination of actions, the EU Solidarity Coordinator should supervise the course of the solidarity adjustment. In order to ensure a rapid response to situations of migratory pressure, the EU Solidarity Coordinator should support the rapid relocation of applicants for international protection. In addition to the Annual Solidarity Pool, Member States, in particular in case of migratory pressure or a serious migratory situation, have at their disposal the "Permanent EU Migration Support Toolbox", which includes measures that can help respond to needs and alleviate pressure on Member States and which are provided for in the Union acquits or policy tools. This undoubtedly strengthens the resilience of the system in terms of adaptability.

According to the provisions of the new Pact, Member States, without prejudice to their competences in matters of acquisition and loss of nationality, should seek to identify stateless persons and strengthen their protection, thus enabling stateless persons to enjoy fundamental

rights and reducing the risk of discrimination or unequal treatment. The Pact also refers to the issue of maintaining family cohesion in the context of the examination of applications for international protection of members of one family by one Member State, so that members of one family are not separated. In addition, the procedures for providing evidence should allow for faster family reunification. Therefore, the Pact indicates that formal evidence, such as original documentary evidence and DNA testing, should not be necessary if circumstantial evidence (photos, evidence of contacts and statements of witnesses) is verifiable and sufficiently consistent to make a credible assessment of the relationship and establish responsibility for examining the application for international protection.

The aim of the new regulations was also to equip the EU system with the potential to respond to crises – situations where the asylum and reception services; child protection system or readmission system of a given Member State become non-functional and situations generating serious dysfunctionality of the common EU asylum system. The institution that is to assess the application of a given country regarding a potentially crisis situation on its territory is the European Commission, which takes an executive decision on the absence or existence of a crisis situation within two weeks. According to the Regulation on crisis situations, these include: mass arrival of third-country nationals and stateless persons on the territory of one or more Member States; a situation of instrumental treatment of migrants by a third country or a hostile non-state actor in order to destabilize a Member State or the Union; a situation of force *majeure* in a Member State (e.g. a natural disaster or pandemic). If a Member State were to find itself in such a situation, the solidarity mechanism would balance responsibilities in crisis situations in order to avoid situations where the failure of one country's asylum system destabilizes the management of migration flows in the EU as a whole and thus undermines the trust of Europeans in the ability of governments and EU institutions to cope with migratory pressures.

The Pact aims to strengthen the democratic resilience of Member States in situations of particular threat from third countries or non-state actors that use migrants to destabilize Member States and the EU as a whole by facilitating their entry into their territories and hindering the performance of essential state functions by democratic institutions, including maintaining public order. In situations described in the 'Crisis

Regulation', a Member State affected by such a situation should be able to request increased solidarity contributions from other countries.

The arguments presented above speak in favour of the Pact strengthening the potential of the democratic resilience of the EU system. However, this does not mean that the Pact is without flaws in this respect. The argument for the anti-democratic nature of the new regulations is the possibility of transferring to the EU level the sovereignty in deciding on the number of migrants that a given country should accept or the amount of the alternative financial contribution (McGuirk, 2024). Democratically elected governments in the country will not be able to completely refuse to participate in the mandatory solidarity mechanism. Changes to the regulations will be determined by a qualified majority vote, which means that they can be voted on by other countries without the possibility of blocking them by a *veto* of individual states.

The Pact does not address many of the main shortcomings of EU migration and asylum management policies, and may therefore not work to strengthen its democratic resilience. First of all, it does not create a refugee status valid throughout the EU, which means that if a person obtains it in one country, they cannot reside in another. In turn, returning rejected asylum seekers to their countries of origin still depends on agreements with those countries. In cases where there are no such agreements or they are very weak, foreigners awaiting readmission remain in reception centres with uncertainty about their future fate.

The implementation of the new regulations will require the necessary resources from the Member States in the form of new border infrastructure (detention centres and border control centres) and additional staff. Even if the European Commission, under the Pact, collects financial contributions at the level of 600 million per year, assuming that most countries will be more willing to make a solidarity contribution in the form of a financial contribution (EUR 20,000 for each rejected asylum seeker out of a total of 30,000 resettled per year), this seems insufficient in the context of the costs incurred by Germany in 2015 and Poland in 2022 (approximately EUR 8 billion each) for the care of refugees (Brady, 2024).

Another controversial issue concerns the provisions on the responsibility and solidarity of the Member States. While the obligations and responsibilities of the States in terms of what they should do to cope with the surge of illegal immigrants are clearly defined, the issue of

solidarity in terms of sharing the burden of receiving and returning immigrants and managing the asylum procedure remains very complex. Member States can choose the form of mandatory solidarity from several alternatives. It is therefore very likely that decision-makers, taking care of their own interests in the domestic arena, will be guided by the pressure of public opinion and nativist and populist parties, rather than the objectively best from the perspective of the efficiency of the system.

The Regulation addressing situations of crisis and force *majeure* – which allows countries in which occur – to suspend the application of certain border procedures and request higher solidarity contributions, does not specify the conditions and numerical criteria that must be met for a given influx to be considered a 'mass arrival' that will destabilize the country's system. The Commission will carry out an individual assessment in each case, which creates the risk that it will also take into account the general political climate and the country's previous compliance with its obligations.

The pact was designed in such a way that solidarity is exercised primarily in favour of the countries of first entry with an external border. On the other hand, rich countries, such as Germany, which has the highest percentage of refugees arriving from other Member States, are also heavily burdened, which causes the reception system to be overloaded and, as a consequence, a decrease in the trust of citizens concerned about the inefficiency of the structures (González Enríquez, 2024). This, in turn, strengthens support for the far right while at the same time hardening the position of the main parties on the issue of migration. An example of this phenomenon is the approach of the German CDU (Christian Democratic Union), which announced a policy of strengthening externalization in the context of agreements with third countries (e.g. Serbia or Macedonia), so that asylum seekers would remain on their territory while their asylum applications are considered and would be sent back from there in case of refusal of entry. This model was adopted by Italy in cooperation with Albania. This is undoubtedly a useful model when these countries remain outside the Schengen area and the EU, which is why externalization of asylum application management may, on the one hand, lead to unjustified deportations to third countries such as Turkey or Albania, and, on the other hand, hinder convergence processes towards the future membership of these countries. This, in turn, is a strong factor against the democratic resilience of the EU itself.

Conclusion

The EU is currently facing many challenges that may contribute to the intensification of migration flows towards the Member States. The main ones are the growing instability in the countries of Africa and the Middle East (especially in the context of the Israeli-Palestinian conflict and regional destabilization) and in Eastern Europe (destabilization caused by the war in Ukraine). In parallel to these challenges, political tensions between the Member States will increase due to problems in managing asylum. The analysis has shown that the new regulations are designed to strengthen each of the elements of the resilience of the asylum management system: resistibility, adaptability, transformability. The priority of protecting the rights of asylum seekers is also emphasized in crisis situations requiring a rapid response. The tightening of the control system is intended to distinguish those in need of international protection from those who do not. However, the provisions of the Pact also have a negative impact on democratic resilience in many aspects. However, it is not the provisions themselves that seem problematic, but how states will implement them. It is not possible to clearly determine the impact of the Pact solely in the positive aspect of strengthening the democratic resilience of the EU system. Much will depend on how regulations are introduced at the national level and how the states themselves approach the choice of solidarity measures. It is their actions and the democratic resilience of their systems that will primarily affect and build the resilient democratic structures of the EU migration and asylum system.

In order to build a resilient democracy, it is necessary to strengthen the resilience of citizens, society and state institutions, which remains a major challenge in the perspective of adopting the new Pact, which shapes a new reality for migration management. Although the Pact indicates many solutions to stabilize migration flows, especially in terms of return policy, it has been criticized by many groups of different provenience. Both the governments of the member states criticize the new regulations for limiting the autonomy of their actions (e.g. Hungary) or the insufficient regulation of the issue of the instrumental use of migration for political destabilization (e.g. Poland in the context of the situation on the border with Belarus).

From the point of view of the balance of power and trust in institutions, the Pact is seen by its critics in particular as one of the largest transfers of security powers from the national to the EU level. Especially with regard to decisions to be taken not directly by

democratically elected representatives of individual parliaments, but at the EU level also by governments of other countries after the Pact enters into force. This primarily concerns the mandatory nature of solidarity contributions.

At the level of political parties, the new regulations have strengthened the existing polarization among both fringe and mainstream parties. Populism, even before the Pact was introduced, posed a major threat to democracy, but what appears to be a major threat to democratic resilience is the hardening of the stance on migration by significant establishment parties, which until now have presented a more liberal model of migration management. This, in turn, further reinforces public fear and resentment toward migrants. However, the tightening of migration and asylum regulations alone does not constitute an argument for their anti-democratic character, as long as these regulations protect the fundamental rights of those affected.

The Pact on Migration and Asylum also affects a strong and diverse civil society, values and a common identity. On the one hand, civil society organizations working for refugees criticize the new Pact for its fiction of 'no entry' due to discriminatory border procedures and the waiting of applicants in detention centres, and the failure to respect the fundamental rights of asylum seekers. On the other hand, citizen engagement and growing electoral participation encourage support for populist parties opposed to liberal values and the creation of a supra-ethnic identity community.

The EU also depends on agreements with countries of origin to increase the number of safe deportations. Therefore, if there is no significant progress in relations with these countries, all solutions introduced to prevent illegal immigration risk being ineffective, leading to further crises and deepening citizens' lack of trust in the ability of democratic state structures to cope with the challenges and turning towards an isolating illiberal democracy.

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Streszczenie

Migracje są jednym z zewnętrznych wyzwań wpływających na rezyliencję demokratycznego systemu na poszczególnych poziomach: równowagi władz i zaufania do instytucji; partii politycznych; społeczeństwa obywatelskiego; wspólnoty politycznej ukształtowanej na fundamencie wspólnej tożsamości i wspólnych wartości. Celem artykułu jest przedstawienie wpływu wyzwań migracyjnych na rezyliencję demokratyczną w UE w kontekście nowego Paktu o Migracji i Azylu, który pozycjonowany jest w debacie publicznej między jego zwolennikami, postulującymi konsekwentne wdrażanie jego postanowień, a kontestatorami, którzy chcą przezwyciężyć go bardziej restrykcyjnymi politykami, projektowanymi na model eksternalizacji. Wykorzystując metodę analizy systemowej oraz analizę instytucjonalno-prawną, starano się rozstrzygnąć na ile Pakt zaprojektowano w taki sposób, aby wyposażyć system UE we wszystkie formy rezyliencji: stawianie oporu (resistibility), adaptacyjność (adaptability), transformacyjność (transformability) w ramach jej wielopoziomowej struktury.

Słowa kluczowe: rezyliencja systemowa, demokracja, Pakt o Migracji i Azylu, migracje.