

# RESILIO Country Report France



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### 1. Introduction

Emmanuel Macron was elected President of the Republic in 2017 and re-elected for another five years in 2022. He is often considered to be “the president of the crisis” because of the multiple and unprecedented challenges he has faced since he took office. These challenges include: the Yellow Vests movement, a grassroots uprising that began in 2018 over a fuel tax increase that expanded into wider violent discontent with Macron's reforms and perceived aloofness; the management of the Covid-19 pandemic which imposed unprecedented restrictions on personal liberties; terrorist attacks, including the beheading of a school teacher in 2020 after he showed cartoons of the Muslim prophet Mohammed in a lesson on freedom of expression, and an anti-Kurdish attack in 2022 that killed three; institutional deadlock in Parliament since the 2022 election and the loss of the majority of Macron's party in the National Assembly; and the spontaneous June 2023 riots in dozens of cities across the nation after a teenager died following a police check. Culminating in dozens of arrests and over 30 investigations against the security forces, the damages totalled over €650 million.

Despite these multiple crises, France did not experience a rule-of-law backsliding. According to the Freedom House 2023 Freedom in the World report, France maintained a score of 89/100 for its political rights and civil liberties.<sup>1</sup> The 2022 Freedom in the World report gave France a score of 89/100, praising ‘vibrant democratic processes and generally strong protections for civil liberties and political

rights.’<sup>2</sup> However, the report also mentioned major weaknesses such as discrimination against the Muslim population, treatment of migrants, the rise of racist discourse, an increase in administrative control measures, police violence, and gender-related violence. The 2023 Amnesty International report reached similar conclusions on France's strong guarantees for political pluralism and general protection of civic and political rights,<sup>3</sup> while also highlighting increased administrative dissolutions of and general restrictions on NGOs, and the state's inaction on climate change.

The 2022 parliamentary elections fragmented the National Assembly (NA) between centre, far-right, and far-left forces. Without an absolute majority, President Macron's party Renaissance has been forced to reach a cross-party agreement on each of its 28 bills. President Macron has attempted to bypass this political fragmentation by establishing a National Council for Refoundation or holding discussions between parties under Chatham House rules. However, the impression remains that the French hyper-presidential system is not compatible with parliamentary negotiations. The past year has shown an extreme polarisation of debates, culminating in the 2023 discussion of the retirement age bill, which cannot be considered a rule-of-law crisis, but still represents a serious blow for parliamentary democracy. The government used all the constitutional instruments at its disposal to muzzle parliamentary debate: blocking the vote, controlling the agenda, cutting the time available to examine the text, and utilising no confidence motions. The opposition also used un-

derhand tactics in its attempts to block the bill. As a result, the reform was narrowly adopted without a vote in the lower house.<sup>4</sup> The constitutional court validated the procedure not without mentioning the unusual nature of the combined use of the constitutional instruments.<sup>5</sup>

This aspect, rather than the content of the reform itself, is perhaps the most detrimental for the resilience of the rule-of-law. Commentators noted the precedent set by the government in terms of controlling and bypassing parliamentary debate, which may open the door to similar practices in future and even more detrimental laws.

## 2. Analysis of the country case along RESILIO model

### 2.1. Most important systemic factor: judicial resilience

The French judicial system is composed of two supreme courts and one constitutional court. The *Conseil d'État* is the highest administrative court, and the *Court de Cassation* is the highest court of the judiciary. The *Conseil Constitutionnel* could be considered the highest court of the constitutional order, but it is not the strongest guarantee against a rule-of-law crisis.<sup>6</sup> This report therefore focuses on the judiciary and administrative supreme courts.

Administrative magistrates in France are recruited either externally (via a public and competitive procedure) or internally from another part of the administration. The most prestigious external recruitment process is via the *École Nationale d'Administration* (ENA), which trains senior civil servants and whose former students can select administrative magistrates on the basis of their exit exam. Magistrates recruited in this way compose a large majority of the Conseil d'Etat. In 2013, a second external recruitment method to recruit judges of administrative tribunals and courts of appeal.<sup>7</sup> Internal recruitment is opened via secondment procedures or direct appointment.<sup>8</sup>

The **status of administrative magistrates** is set out in the Code of Administrative Justice and the State Civil Service Regulations. Administrative magistrates are civil servants belonging to a single body divided into three grades: councillor, first councillor, and president. They are appointed by decree of the President of the Republic on the recommendation of the High Council of Administrative Tribunals and Administrative Courts of Appeal (CSTACAA), which is responsible for managing their careers and exercising disciplinary powers.<sup>49</sup> Administrative judges enjoy independence in the performance of their duties and can-

not be removed. In 1980, the Constitutional Council enshrined the existence and independence of the administrative courts as one of the fundamental principles recognised by the laws of the Republic.<sup>10</sup>

**Judiciary magistrates are recruited** mainly through competitive examinations organised by the *École nationale de la magistrature* (ENM). Having completed a 31-month paid course, they are then appointed as magistrates by decree of the President of the Republic on the recommendation of the High Council of the Judiciary.<sup>11</sup>

The **status of judicial magistrates** in France is governed by the Constitution and Ordinance no.58-1270 of 22 December 1958, an organic law on the status of magistrates, which has been amended several times.<sup>12</sup> Judicial magistrates make up a single body that distinguishes between sitting magistrates responsible for civil, criminal, and social cases, and standing magistrates, the prosecutors under the Minister of Justice who are responsible for representing the interests of society and ensuring that the law is applied.<sup>13</sup>

Judges are subject to strict ethical and disciplinary rules and may not engage in any profit-making or political activity incompatible with their duties. If they fail to meet these obligations, they may be subject to **disciplinary proceedings** before the High Council of the Judiciary, which may impose penalties ranging from a simple warning to dismissal.<sup>14</sup>

Over the last thirty years, important reforms have increased the autonomy of the judiciary vis-à-vis the government. The two examples that illustrate this trend are as follows.

The *Conseil Supérieur de la Magistrature* (High Judiciary Council – CSM) was created by the 1958 Constitution. In its original version, it was chaired by the President of the Republic, and further included the Minister of Justice as the vice-chairman, and five judges elected by their peers. The CSM was transformed from being a politically-led institution to a judiciary-led one by the Constitutional Act of 27 July 1993. It was split into two panels: one for judges, comprising eight members (the President of the Republic, the Minister of Justice and six judges elected by their peers), and the other for prosecutors, comprising seven members (the Minister of Justice, who chaired the panel, and six judges elected by their peers).<sup>15</sup> The CSM was further reformed by the Constitutional Act of 23 July 2008,<sup>16</sup> which enlarged it to include leading figures from outside

the judiciary and chaired by the First President of the Cour de cassation. It had 22 members: eleven for the panel dealing with judges,<sup>17</sup> eleven members on the panel responsible for prosecuting magistrates.<sup>18</sup>

The constitutional reforms of 1993 and 2004 progressively shielded the management of judges' career from political interference. The CSM's original remit was to propose the appointment of judges to the President of the Republic and give its opinion on the appointment and punishment of prosecutors. The current role of the CSM is to recommend to the President of the Republic the candidates for the positions of first presidents of the courts of appeals and the presidents of the judicial courts, to give its assent to the appointment of other judges, and to give its opinion on the appointment of public prosecutors. It is also in charge of imposing disciplinary sanctions on judges and opining on disciplinary sanctions against public prosecutors. Further reforms have been approved, yet not implemented, to reinforce its prerogatives and to erase completely political interference in the management of judges' careers.<sup>19</sup>

The *Parquet National Financier* (the National Financial Prosecutor's Office, PNF) was created in December 2013 and tasked with tracking down serious economic and financial crime. It took up its duties on March 2014. It is headed by a Financial Public Prosecutor, who has national jurisdiction to deal with highly complex cases involving tax fraud, corruption, money laundering or breaches of probity, and is located on the premises of the Paris Judicial Court but is separate from the Paris Public Prosecutor's Office.

The PNF has been at the centre of recent important decisions concerning the political authorities. For example, the former President Nicolas Sarkozy was sentenced in 2023 to three years in prison, including one year for corruption and influence peddling in the so-called 'wiretapping' affair, for attempting to obtain confidential information from a high-ranking magistrate in exchange for a position in Monaco in 2014.<sup>20</sup>

Of the two aspects of institutional resilience identified in the model, state bureaucracy can be considered a relevant systemic resilience factor for France. French public administration is characterised by a transparent career path and a functioning apparatus. Most civil servants enter office through a public service competition. Civil servants are under a life-long contract and can move between ad-

ministrations throughout their career. Public service contracts are amongst the most protected contracts in France. However, the French public administration also suffers from a number of weaknesses. Public servants such as nurses or teachers are amongst the lowest paid in the OECD, while public services (hospitals, schools, universities, and fiscal services) are under-staffed.

Constitutional resilience is a reality of the French political system. The current constitution is the longest lasting of French constitutional history. It has been amended 24 times since 1958 and was last changed in 2008.<sup>21</sup> However, the French constitutional system cannot be taken as a model for rule-of-law resilience, since the constitution does not have a bill of rights at its core. The President of the Republic can declare a state of emergency or a referendum without counterchecks. Most of all, too much of the French political system is defined by customary constitutional rules and not by the letter of the constitution. The most striking example is Article 20 of the Constitution which states that: 'The Government shall determine and conduct the policy of the Nation.' The reality is that the President decides, and the Prime Minister executes. Finally, the legislature has in practice very little control over the government's actions.

## 2.2. Most important subsidiary factor: media resilience

Even if the situation of media landscape in France is far from being exemplary, media resilience remains the most important subsidiary factor.<sup>22</sup>

There are **several types of radio stations** in France: public radio stations (Radio France group) with news, culture, music, or public service programmes; private radio stations financed by advertising or sponsorship that offer generalist or thematic programmes; and community radio stations run by non-profit associations with a social, educational, or cultural profile.

The range of **TV stations** in France is broad. DTT (digital terrestrial television) is the most widely used reception method in France and provides 27 national and local channels free of charge, including 7 public channels. Almost all public channels are all part of the France Télévisions group and have public service remits. Private channels are funded by advertising and/or subscriber payments.

The range of **newspapers** in France is diverse, with more than 1,000 newspaper titles including national, regional, local, specialist, and general publications. The newspaper market is facing many structural issues including a declining number of journalists, precarious employment conditions, an unprecedented decline of readers and incomes, and a weakened distribution network. Another major problem for editorial independence and pluralism is the concentration of newspaper ownership. Five of the nine national daily papers are owned by groups from outside the media sector. In 2019, the ten largest publishers accounted for 30% of sales. Nearly 60 titles in the regional daily press are owned by around ten groups, with two media groups accounting for two-thirds of the daily press circulation.<sup>23</sup>

The *Autorité de Régulation de la Communication Audiovisuelle et Numérique* (Audiovisual and Digital Communications Regulatory Authority – ARCOM) is the body in charge of **regulating and controlling audio-visual and digital communication**. Its members are appointed for a six-year term by five different authorities representing both political and judicial institutions.<sup>24</sup> ARCOM members have security of tenure and may only be dismissed for incapacity or serious misconduct. They may not hold any other public or private office or elective mandate.

The ARCOM grants authorisation to broadcast on private TV and radio channels, whereby candidate organisations must provide a coherent, original and diversified editorial project that respects the principles of pluralism, independence, ethics and the protection of young audiences. ARCOM can impose **sanctions** for breaches of obligations by publishers of audio-visual communication services (radio, television, public and private on-demand audio-visual media services), operators of digital platforms (websites, social networks, etc.) and internet users who infringe copyright. Sanctions are proportionate to the seriousness of the infringement, ranging from formal notices, warnings, suspensions, withdrawal of authorisation, fines, and legal referrals. One recent sanction of February 2023 fined a private TV channel €200,000 for broadcasting humiliating and degrading content.<sup>25</sup> Sanctions are published on the ARCOM website and may be appealed to the Conseil d'État.

Within the ARCOM, the *Conseil supérieur de l'audiovisuel* (Broadcasting high authority – CSA) is in charge of appointing the **chairpersons of public broadcasting companies**.<sup>26</sup> Before 2013, chairpersons were nominated by a

presidential decree based on the opinion of the regulating authority. Since 2013, the President no longer intervenes in the nomination of the chairpersons, who are appointed following the approval of a strategic project. The CSA is in charge of guaranteeing the independence and impartiality of the public audio-visual communication sector.<sup>27</sup>

The **free communication of thoughts and opinions**, enshrined in the 1789 Declaration of the Rights of Man and of the Citizen, is a constitutional right. Since the press freedom law of 1881, the **press** has enjoyed a specific status that recognises its role in the democratic vitality of the country.<sup>28</sup> Media companies are subject to specific rules and regulations according to the principle of freedom of communication enshrined in law no. 86-1067 of 1986. Finally, the freedom, pluralism and independence of the media are enshrined in the exclusive domain of the law since a constitutional amendment in 2008.<sup>29</sup>

The legal framework for **radio and TV broadcasting** is also defined by law 86-1067 of 1986 on freedom of communication. This law lays down the general principles for regulating audiovisual media, including respect for freedom of communication, pluralism of thought and opinion, independence of public broadcasting companies, and protection of the public and copyright.<sup>30</sup> The legal framework for radio and TV broadcasting is also supplemented by other legislation and regulations covering specific aspects such as advertising, copyright, the protection of minors, the fight against online hatred, and the manipulation of information.<sup>31</sup>

The latest report from Reporters without Borders (RSF)<sup>32</sup> places **France 24th in the world**, two places higher than the previous year. RSF stresses that the legal and regulatory framework in France is favourable to press freedom and editorial independence, but adds that the tools for combating conflicts of interest are inadequate, inappropriate, and outdated. Despite the adoption of a new policing plan that is more respectful of journalists' rights during demonstrations, reporters continue to be subjected to police violence in addition to attacks by demonstrators.<sup>33</sup> There are no instances of direct censorship or pressure on journalists' work. The media continue to play **a major critical role** implicating government public officials in wrongdoing. Recent political affairs uncovered since 2017 by the media include:

- The *Mutuelles de Bretagne* affair, which broke in 2017 after the newspaper *Le Canard enchaîné* accused

the Minister for Territorial Cohesion, Richard Ferrand, of having favoured his companion in a property deal, which led to his resignation from the government.

- The Benalla affair, which erupted in 2018 after *Le Monde* published a video showing Alexandre Benalla, an official at the Élysée Palace, beating demonstrators on May Day in Paris. The affair caused a major political crisis and highlighted the dysfunction within the French presidency.

- The Marianne fund affair which came to light in 2023 after the publication of several journalistic investigations revealing the suspicious use of subsidies allocated to the fight against Islamic separatism. The fund had been created in 2021 by Marlène Schiappa, then Minister Delegate for Citizenship. A Senate committee of enquiry has been set up to shed light on the matter. The case is also under prosecution.

The civic space in France provides for empowered and robust civil society landscape. France can count on an active and organised trade union network as shown during the protest against the retirement reform, but also in specific professions (doctors, judges, transports, refuse collectors, police). Non-governmental organisations are important watchdogs in various domains such as environment, consumption, housings, migrants' rights. Almost 50% of French people say they are involved in a non-profit-making association or organisation, either through donations or voluntary work, and 2/3 of the aged 16-24.<sup>34</sup>

### **2.3. Most important contextual factor: public discourse**

This section focuses on the resilience of public discourse.<sup>35</sup> Political opponents in France play by the democratic rules and admit defeat in elections. In general, there is a sense of civility in political competition.

All candidates who lost in the first round of the 2022 presidential elections acknowledged their defeat, starting with the left-wing leader Jean-Luc Mélenchon who lost the second place to Marine le Pen by a narrow margin (1.2% of the votes). Le Pen also conceded her defeat on the night of the second-round results. In the 2022 parliamentary elections, President Macron's Renaissance party lost its absolute majority yet claimed a clear electoral mandate. No party or leader tried to challenge the official results by engaging in a disinformation campaign.

Parliamentary groups abide by the rules governing the elections of committee members or the voting procedure. The tense political situation manifests itself in verbal personal attacks, mostly in the National Assembly. However, these attacks have been sanctioned by points of order issued by the president of the House, and the sanctioned MPs have complied with the penalty.<sup>36</sup> This also shows the resilience of the rule of law within parliamentary representation.

The resilience of public debate is more complicated to assess. Each political force has its own interpretation of the facts, but this is not beyond the normal political communication. It is part of the political game and could even be seen as a sign of democratic vitality. Moreover, there is no evidence of any malicious influence on the public debate, either from domestic or external actors.

Public debate in France suffers from the polarisation, yet French public debate is always heated and divided. There is no clear anti-rule-of-law rhetoric among the main political forces. Even the far-right party Rassemblement National (RN), led by Marine le Pen, has abandoned some of its more radical anti-republican positions, such as the restoration of the death penalty or the restriction of abortion. Institutionally, the RN has continued its strategy of normalisation, greatly reinforced by its 88 seats in the National Assembly.<sup>37</sup> It is difficult to say if this normalisation is just a tactic to win the next presidential elections in 2027, or if the French democratic system has integrated the far-right party, as was the case with the post-fascist *Fratelli d'Italia* in Italy.

On 30 August 2023, President Macron convened a private meeting with the leaders of all political parties behind closed doors. The aim was to seek consensus on a number of political issues of national importance, such as labour rights, immigration, or France's position on Ukraine. All party leaders agreed to attend the meeting, which lasted for more than 12 hours. It is too early to judge its success, but it is at least a sign that political forces can initiate dialogue together under certain conditions. It also shows a certain resilience of public discourse.

### **3. Impact of crises on the rule of law: terrorism in focus**

After the 2015 terrorist attacks in Paris, France declared a state of emergency that lasted until November 2017, making it the longest state of emergency in French history. The

lifting of the state of emergency coincided with an incorporation of exceptional measures into law. Some restrictions of fundamental rights which were only previously possible in exceptional times thus became possible in non-exceptional times.<sup>38</sup> Against this background, one could have feared a similar contamination effect after the lifting of the new Covid-related sanitary state of emergency, but such a scenario did not occur.

Certain reforms show a tendency to reinforce security measures at the expense of fundamental rights. In May 2021, the Parliament adopted the Law on Global Security, which considerably reinforced the powers of local police as well as the surveillance of demonstrations through security cameras and drones. The law initially also foresaw a restriction on the media coverage of demonstrations, but this aspect was censored by the constitutional court.<sup>39</sup> Earlier this year, the government started to use drones during demonstrations.<sup>40</sup>

In July 2021, Parliament adopted the Law Reinforcing the Republican Principles following the murder of a school-teacher by a radicalised Muslim.<sup>41</sup> The law simplifies the disbanding of associations that disrespect the values of the Republic, targeting Muslim associations as well as neo-Nazi groups. Very recently, this law was used as the legal basis for the dissolutions of a pro-environment group but also a far-right Catholic group.<sup>42</sup> The justifications put forward by the Minister of Interior seem more political than legal, and might not survive judicial scrutiny.<sup>43</sup>

#### **4. Conclusion**

France has shown remarkable rule of law resilience despite dealing with various crises since 2017. The country consistently scored between 89 and 90/100 in the Freedom House report over the last 6 years, reflecting a legal system that ensures political pluralism and safeguards civic and political rights.<sup>44</sup>

This country report has examined three aspects of resilience: judicial, media, and civic discourse. Among them, judicial resilience is deemed the most crucial for the system. The French judicial branches (administrative and judiciary) have a long history of adhering to rule of law principles. They are composed of qualified and independent judges who are appointed through merit-based procedures and are subject to strict ethical and disciplinary rules.

They have the authority to challenge the political power by invalidating administrative regulations or by prosecuting and judging political officials.

The media also play a vital role in enhancing the rule of law resilience in France. They have demonstrated their ability to act as the fourth pillar of the Republic on many occasions in the past year. The legal framework for the media is not perfect and does not sufficiently prevent ideological or financial influence. However, it provides robust guarantees for freedom of expression, press protection, public broadcasting appointments, and content regulation.

Finally, the resilience of public discourse indicates that despite the current political tensions, political actors still respect the democratic rules. There is also no proven sign of malign influence.

## Sources

- <sup>1</sup> Freedom in the World 2023 Report, Freedom House, <https://freedomhouse.org/country/france/freedom-world/2023> (last checked: 8.11.2023).
- <sup>2</sup> Freedom in the World 2023 Report, Freedom House, <https://freedomhouse.org/country/france/freedom-world/2022> (last checked: 8.11.2023).
- <sup>3</sup> France 2022, Amnesty International, <https://www.amnesty.org/en/location/europe-and-central-asia/france/report-france/> (last checked: 8.11.2023).
- <sup>4</sup> This was a consequence of the activation of Article 49.3 of the Constitution, which allows the government to attach the vote on a bill to a vote of confidence. If the National Assembly votes for the confidence motion, the bill is adopted and vice-versa. The government was nine votes close to a vote of non-confidence.
- <sup>5</sup> Conseil Constitutionnel, Décision n°2023-849 DC du 24 avril 2023, <https://www.conseil-constitutionnel.fr/decision/2023/2023849DC.htm> (last checked: 8.11.2023).
- <sup>6</sup> There are three main reasons for this: the nomination procedure for its members values political friendship over constitutional expertise; the unwillingness to control presidential referendum (a tool Marine Le Pen wants to use if she is elected); and the febrility it showed in recent years to stand against controversial reforms from a constitutional perspective (during the Covid crisis and the recent pension reform).
- <sup>7</sup> This recruitment method provides the most important contingent of administrative judges (around 25 judges every year as opposed to the 3 or 4 ENA-graduates who join the Conseil d'État). It also provides for the most qualified judges, as the candidates must take an exam exclusively focused on public law, often have a master's degree in this area, and previous professional experience in administrative jurisdiction. None of this applies to ENA graduates yet they start their careers in the most prestigious court.
- <sup>8</sup> Secondment is open to magistrates of the judiciary or civil servants or military personnel belonging to the highest grade of public servant. Direct recruitment allows the appointment of councillors and first councillors of administrative courts and administrative courts of appeal from among those who have practised law for at least eight years.
- <sup>9</sup> The disciplinary procedure for administrative magistrates is governed by articles L. 236-1 to L. 236-7 of the Code of Administrative Justice. The matter may be referred to the CSTAAA by the vice-president of the Conseil d'État, the president of the administrative court of appeal or the president of the administrative tribunal to which the accused magistrate reports, or by the Minister of Justice. The CSTAAA investigates the case and may impose disciplinary sanctions. The decision may be appealed to the Conseil d'État. See: [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000033239504](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000033239504) (last checked: 30.11.2023).
- <sup>10</sup> Décision n° 80-119 DC du 22 juillet 1980, Loi portant validation d'actes administratifs, <https://www.conseil-constitutionnel.fr/decision/1980/80119D-C.htm> (last checked: 8.11.2023).
- <sup>11</sup> There are also other ways of recruiting magistrates for the judiciary, without passing a competitive examination such as complementary recruitment, which enables judges and prosecutors to be appointed directly from among people who have practised a qualified legal profession for at least fifteen years, or secondment – which enables civil servants or public officials belonging to a category A or equivalent body or employment category to temporarily perform the duties of a magistrate.
- <sup>12</sup> Ordonnance n° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT00000339259> (last checked: 8.11.2023).
- <sup>13</sup> The division is not hermetic. A magistrate can move from one type of function to another throughout his or her career.
- <sup>14</sup> Art. 45, Ibid.
- <sup>15</sup> Loi constitutionnelle n° 93-952 du 27 juillet 1993 portant révision de la Constitution du 4 octobre 1958 et modifiant ses titres VIII, IX, X et XVIII, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT00000529277> (last checked: 8.11.2023).
- <sup>16</sup> Loi constitutionnelle n° 2008-724 du 23 juillet 2008 de modernisation des institutions de la Ve République, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000019237256> (last checked: 8.11.2023).
- <sup>17</sup> Six judges elected by their peers, one Conseiller d'État appointed by the Conseil d'État, one lawyer appointed by the Conseil National des Barreaux (Bar National Association) and three qualified persons appointed by the President of the Republic, the President of the Senate and the President of the National Assembly respectively. Art. 31, Ibid.
- <sup>18</sup> Six magistrates elected by their peers, one Conseiller d'État appointed by the Conseil d'État, one lawyer appointed by the Conseil National des Barreaux and three qualified individuals appointed by the President of the Republic, the President of the Senate and the President of the National Assembly respectively. Ibid.
- <sup>19</sup> The CSM was to be reformed once again by the constitutional law reforming the Supreme Judicial Council, which was adopted on first reading by the National Assembly on 24 June 2016 and by the Senate on 16 October 2019, but was not submitted to Congress for a vote. The aim of this reform was to strengthen the independence and authority of the CSM, in particular by eliminating the role of the President of the Republic in the appointment of magistrates, by making it mandatory for the CSM to give its assent to the appointment of public prosecutors.
- <sup>20</sup> In 2022, François Fillon (former Prime Minister and candidate to the 2017 presidential elections) was found guilty of misappropriating public funds, complicity, and concealment of misuse of social assets and aggravated fraud. He was sentenced to five years' imprisonment, including two years' imprisonment, a fine of €375,000 and a ten-year disqualification from standing for election for ten years.
- <sup>21</sup> Conseil Constitutionnel (2008). Les révisions constitutionnelles, <https://www.conseil-constitutionnel.fr/la-constitution/les-revisions-constitutionnelles> (last checked: 10.11.2023).
- <sup>22</sup> Over recent years, serious concerns about media pluralism and editorial independence have emerged following the capture of several media platform by groups owned by Vincent Bolloré, a French billionaire with well-known far-right political opinions. See Julia Cagé, Benoît Huet, L'information est un bien public: Refonder la propriété des medias, Seuil, (2021).
- <sup>23</sup> Ministère de la Culture (2002). Chiffres clés, statistiques de la culture, <https://www.culture.gouv.fr/Thematiques/Presse-ecrite/Documentation/Enquete-annuelle-sur-les-titres-de-presse-imprimee-et-en-ligne> (last checked: 10.11.2023).
- <sup>24</sup> Namely: the President of the Republic, the President of the National Assembly, the President of the Senate, the Vice-President of the Council of State and the First President of the Court of Cassation. Art. 5, Loi n° 2021-1382 du 25 octobre 2021 relative à la régulation et à la protection de l'accès aux œuvres culturelles à l'ère numérique, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044245615> (last checked: 10.11.2023).



- <sup>25</sup> ARCOM (2023). Décision du 9 février 2023 portant sanction pécuniaire à l'encontre de la société C8, <https://www.arcom.fr/nos-ressources/espace-juridique/decisions/decision-du-9-fevrier-2023-portant-sanction-peuniaire-lencontre-de-la-societe-c8> (last checked: 10.11.2023).
- <sup>26</sup> The presidents are appointed for five years by the CSA, by a majority of its members, on the basis of a strategic plan. These appointments are subject to a reasoned decision based on criteria of competence and experience. Art. 47-4, <https://www.legifrance.gouv.fr/loda/id/LEGIAR-TI000028203253/2013-11-17/> (last checked: 30.11.2023).
- <sup>27</sup> Art. 3-1, *Ibid.*
- <sup>28</sup> Loi du 29 juillet 1881 sur la liberté de la presse, <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006070722> (last checked: 10.11.2023).
- <sup>29</sup> Art. 34 of the Constitution: 'Statutes shall determine the rules concerning civic rights and the fundamental guarantees granted to citizens for the exercise of their civil liberties; freedom, diversity and the independence of the media.'
- <sup>30</sup> Art. 1, Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000512205> (last checked: 10.11.2023).
- <sup>31</sup> See Loi n° 92-597 du 1er juillet 1992 relative au code de la propriété intellectuelle; Loi n° 2020-766 du 24 juin 2020 visant à lutter contre les contenus haineux sur internet; LOI n° 2018-1202 du 22 décembre 2018 relative à la lutte contre la manipulation de l'information.
- <sup>32</sup> Reporters Sans Frontiers (2023). France, <https://rsf.org/fr/pays/france> (last checked: 10.11.2023).
- <sup>33</sup> In 2020, the Minister of Interior published a new national policing plan which was partly censored by the Council of State. Among the measures censored was the requirement for journalists to leave the site of demonstrations after the dispersion of the demonstration. The most recent version of the national policing plan, published in December 2021, took account of the decision, and withdrew the given obligation. See Ministre de l'Intérieur, Schéma National du Maintien de l'Ordre (December 2021), <https://www.interieur.gouv.fr/sites/minint/files/medias/documents/2021-12/schema-national-du-maintien-de-l-ordre-decembre-2021.pdf> (last checked: 24.11.2023).
- <sup>34</sup> Institut National de la Jeunesse et de l'Éducation Populaire, "Deux tiers des français impliqués dans la vie associative!", <https://associations.gouv.fr/deux-tiers-des-francais-impliques-dans-la-vie-associative.html> (last checked: 24.11.2023).
- <sup>35</sup> Economic and social resilience certainly play their parts to understand rule of law resilience in France. On factors of social resilience (diversity and inclusion, sense of community), see, among others, the work of Jérôme Fourquet, L'archipel français, Naissance d'une nation multiple et divisée, Seuil (2019). On economic factors, see the studies of the Observatoire des inégalités, <https://www.inegalites.fr/> (last checked: 24.11.2023).
- <sup>36</sup> Le Monde, À l'assemblée, vol au-dessus d'un nid de d'oiseaux bleus, 12 February 2023, <https://www.lemonde.fr/blog/cuisines-assemblee/2023/02/13/a-lassemblee-vol-au-dessus-dun-nid-doiseaux-bleus/> (last checked : 10.11.2023).
- <sup>37</sup> V. Martin, Le RN est-il devenu un partie comme les autres? The Conversation, 6 April 2023, <https://theconversation.com/le-rn-est-il-devenu-un-partie-comme-les-autres-201690> (last checked 10.11.2023).
- <sup>38</sup> These restrictions include: the possibility for the Prefect to set up protection areas with limitation of movement and ID checks, or to impose a house arrest to anyone suspected to represent a risk for public safety. These new powers granted to the administrative authority do not require the approval of a judiciary judge. The control of the measures by the judge is only ex-post, which does not diminish the risk of arbitrariness. Vie publique (2017). De l'état d'urgence à la loi renforçant la sécurité intérieure et la lutte contre le terrorisme, <https://www.vie-publique.fr/en-bref/38526-de-letat-durgence-la-loi-renforçant-la-securite-interieure> (last checked 10.11.2023).
- <sup>39</sup> Vie publique (2021). Loi du 25 Mai 2021 pour une sécurité globale préservant les libertés, <https://www.vie-publique.fr/loi/277157-loi-pour-une-securite-globale-preservant-les-libertes> (last checked: 10.11.2023).
- <sup>40</sup> The Minister of Interior adopted a decree in April 2023 to clarify the legal framework for the use of drones. Acting as an interim relief judge, the Conseil d'État did not suspend the decree but a decision on its merits is expected in the coming months.
- <sup>41</sup> Légifrance (2021). LOI n° 2021-1109 du 24 août 2021 confortant le respect des principes de la République, <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000042635616/> (last checked: 10.11.2023).
- <sup>42</sup> See the decree of dissolution: Décret du 21 juin 2023 portant dissolution d'un groupement de fait, [https://www.legifrance.gouv.fr/download/pdf?id=y9P\\_0i9TiRCvth7u55oKIE1tUE4pff\\_NWtPY0T-2KIM](https://www.legifrance.gouv.fr/download/pdf?id=y9P_0i9TiRCvth7u55oKIE1tUE4pff_NWtPY0T-2KIM) (last checked: 10.11.2023). The Minister of Interior announced in early August the dissolution of the far-right Catholic group 'Civitas' but no decree has been adopted yet.
- <sup>43</sup> The attempt of the minister of interior to dissolve the pro-environment group "Les soulèvements de la Terre" was temporarily suspended by the administrative supreme court. See the decision of the Court: <https://www.conseil-etat.fr/actualites/le-conseil-d-etat-suspend-en-refere-la-dissolution-des-soulevements-de-la-terre> (last checked: 10.11.2023).
- <sup>44</sup> Freedom House, *op.cit.*



### About the author

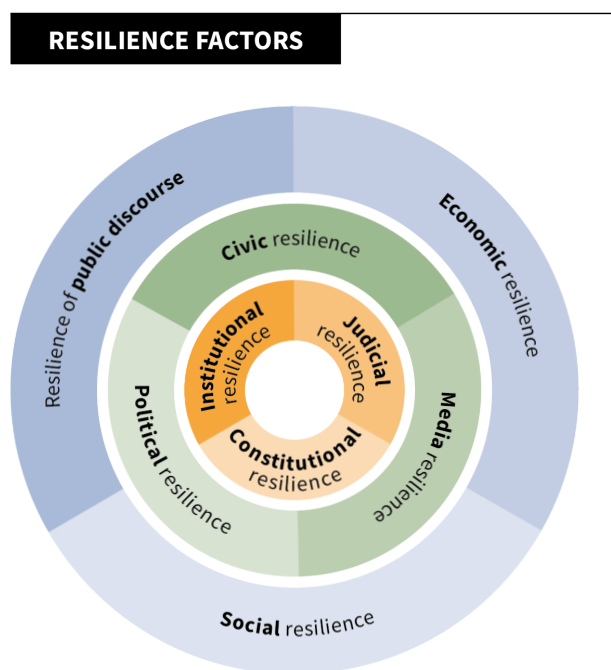
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### About the project

**RESILIO** aims to identify institutional and societal factors that make the rule of law more resilient, thus adding a constructive contribution to academic and policy debates. It draws on a “thick” definition of the rule of law, understood as closely connected to democracy and fundamental rights. The resilience of the rule of law means that the rule of law can experience hazardous events or incremental threats without losing its core function, structure and purpose.

### About the paper

This paper is part of the **RESILIO Country Report series**. It is a collection of compact analyses that assess the source of rule of law resilience in each EU member state by examining the most prominent resilience factors, using the analytical framework of the RESILIO model.



**RESILIO** offers a multi-layered model of the rule of law resilience. Systemic dimension (orange) reflects upon the resilience of the legal setup; subsidiary dimension (green) looks at the phenomena and tendencies present in societies as possible facilitators; and contextual dimension (blue) analyses the broader habitat, determined by structural and systemic variables like economic growth, social cohesion, and general political climate. RESILIO also takes into account the horizontal effects of unpredicted and unprecedented crises that can affect all dimensions of rule of law resilience with different intensity.

While each factor is necessary for a resilient rule of law, they are only sufficient in combination.

The considerations in this paper are compatible with the developed conceptual model of the resilience of the rule of law. They focus on **social resilience** as a contextual factor strengthening the rule of law.

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For more information, visit the project website: [www.iep-berlin.de/en/projects/future-of-european-integration/resilio/](http://www.iep-berlin.de/en/projects/future-of-european-integration/resilio/)

