

RESILIO

Country Report

Spain



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1. Introduction

Spain, officially known as the Kingdom of Spain, is located on the Iberian Peninsula in southwestern Europe. As of 2023, Spain ranks 30th in the world in terms of population, with approximately 48 million inhabitants, and 15th in GDP.¹ After a brief and unstable democratic experience during the Spanish Second Republic (1931-1936), General Franco's military coup d'état and the subsequent Civil War gave rise to a dictatorship that lasted until 1975. Accordingly, it was not until 1978 that Spain transitioned again into a democracy, as part of the so-called 'third wave' of democratisation in the 20th century.²

Regardless of its late democratisation process and despite several critical constitutional crises – the 1981 attempted military coup d'état, the long lasting impact of ETA's terrorist activity in the Basque Country, or the territorial crisis in Catalonia – Spain is widely regarded as a stable liberal democracy, ranking in the global top 10 percent according to the 2021 Varieties of Democracy (V-Dem) Liberal Democracy Index (LDI).³ It follows that the country boasts a reasonably effective rule of law. In 2022, Spain ranked 23rd out of 140 countries in the annual World Justice Project Rule of Law Index, and 17th out of 31 countries within the EU + EFTA + North American region.⁴ According to this measure, Spain holds an overall rule of law score of 0.73/1.00, a score that has been increasing since 2015, although it has seemingly plateaued in the last three years.

The drop in Spain's rule of law score is closely related to its poor performance in civil justice (issues including the extent of improper government influence, unreasonable delays, and enforcement), as noted by the WJP's Rule of Law Index, where Spain ranks 30th out of 140 countries in this area.⁵ In 2021, Spain's classification as a 'full democracy' was downgraded by The Economist's Democracy Index to 'flawed.'⁶ Specifically: 'Spain's relegation in 2021 is the result mainly of a downgrade in its score for judicial independence, related to political divisions over the appointment of new magistrates to the General Council of the Judiciary, the body that oversees the judicial system and is intended to guarantee its independence. At present, the council is operating on a caretaker basis, as its term of office expired in 2018, and there has been no agreement about the appointment of new judges (which need a three-fifths majority in parliament).'⁷

Although Spain recovered The Economist's 'full democracy' classification in 2022, the ongoing political deadlock means that the above-mentioned judicial appointments remain unresolved. Following post-2008 recession, Spain's increasingly fragmented political system has been unable to establish a governing majority in parliament since 2015, leading to frequent and inconclusive elections. The proliferation of ideologically distinctive smaller parties has garnered supporters on the more extreme reaches of the right and left, as well as in regional blocs. According to the 2022 V-Dem LDI Report⁸ Spain, together with Germany, Portugal, and the USA, is one of the countries in North America and Western Europe that experienced a

meaningful and statistically significant increase in political polarisation from 2011 to 2021, reaching ‘toxic’ levels. This pervasive political polarisation stands out as one of the significant challenges that Spain must confront in the early twenty-first century.

2. Analysis of the country case along RESILIO model

2.1 Most important systemic factor: constitutional resilience

Constitutional resilience represents the most relevant systemic factor shaping rule of law resilience in Spain. The Comparative Constitutions Project registers ten constitutions in Spain since 1808,⁹ of which the 1978 Constitution is about to become the longest lasting constitution in Spanish history (45 years old). The current Spanish Constitution enjoys great social endorsement: it was supported by 88 percent of Spaniards in the 1978 referendum, and according to research carried out by the Spanish Center for Sociological Research in November 2022,¹⁰ the 1978 Constitution was the only institution that received an average trust level above 5 on a scale from 1 to 10; specifically, it obtained a 6.36. In comparison, political parties (3.70), unions (3.66), the Spanish government (4.04), Spanish parliament (4.28), media (4.24), and the judiciary (4.78), all received evaluations below 5.

According to Spanish social scientist Ignacio Sánchez-Cuenca, the 1978 Constitution is the most inclusive constitution in Spanish history in terms of both substance and constitution-making procedures.¹¹ The 1978 constitution embodies the consensual politics that is associated with the Spanish transition to democracy. Moreover, as a rigid national or popular constitution, it requires certain supermajorities for constitutional change. Since 1978, the Constitution has been revised only twice: in 1992, the reform of Article 13.2 allowed citizens of other EU member states to vote in local elections in accordance with the Maastricht Treaty; and in 2011, the concept of budgetary stability was introduced under Article 135. On both occasions, the country’s two mainstream parties worked together to endorse the measure with a legislative supermajority. Although this rigidity could be seen as an example of the system’s inability to reform itself, it could also be understood as proof of the strength of Spanish constitutionalism.

Institutional resilience and judicial resilience represent much more problematic systemic factors. As stated in the

introduction, judicial resilience suffers from profound political challenges that are starting to have problematic consequences for the effective functioning of Spanish rule of law. For instance, at the time of writing, the partisan deadlock regarding the renewal of General Council of the Judiciary – the body intended to guarantee judicial independence, and which appoints high-ranked judges – in practical terms means that 30 percent of High Court staff positions are unfilled. Additionally, opposition parties have raised concerns about political interference in judicial independence following the recent appointment of former Justice Ministers to key positions, including the country’s Public Prosecutor and a judge on the Constitutional Court.

Institutional resilience in Spain has also been considered to be weakened in the wake of the post-2008 recession. The frequent and inconclusive elections and lack of a governing majority in Parliament since 2015 has resulted in a significant decrease in the passage of legislation and a rise in the use of executive decrees to advance the government’s agenda without parliamentary approval. According to Freedom House, this ‘instability has hampered the national government’s capacity to address major challenges such as the separatist movement in Catalonia and the COVID-19 pandemic.’¹²

2.2. Most important subsidiary factor: political resilience

Political resilience continues to be the most relevant subsidiary factor shaping rule of law resilience in Spain. According to existing indices,¹³ the electoral process excels in terms of freedom and fairness, and political pluralism is relatively high in the country. Spain’s parliamentary system features competitive multiparty elections and peaceful transfers of power between rival parties. This is particularly relevant given the recent fragmentation of Spain’s party system, in which the number of parties competing for power has increased greatly, thus bringing radical left-wing and right-wing parties into mainstream politics.

However, increasing political polarisation has cut social trust in political parties to a historical minimum. According to the Spring 2023 Standard Eurobarometer, only 11 percent of Spaniards trust political parties; this is 9 percentage lower than the European average.¹⁴

Media resilience and civic resilience represent relatively weaker subsidiary factors. According to the Centre for

Media Pluralism and Media Freedom's annual Media Pluralism Monitor report, Spain's media system is at a medium risk level,¹⁵ which is lower than its neighbours and Western European countries generally. Market plurality in Spain is particularly worrisome, due to 'the existing lack of transparency of media ownership and financial transparency, as well as because of existing signs of news media market concentration.' Moreover, political independence is also weak, given the 'lack of editorial autonomy and safeguards for political independence of media, both public and private, continues to endanger media pluralism in Spain. Worth mentioning here is the situation of public service broadcasters, still powerless to stop partisan interference in their reporting and appointment of management and editorial positions.'¹⁶

Trust in public institutions in Spain is relatively low compared to other European countries, with a few exceptions such as trust in the army or police. Specifically, only 45 percent of Spaniards trust regional and local public authorities (10 percentage lower than the European average). Additionally, only 22 percent of Spaniards trust the national parliament (11 percentage less than the European average), and only 27 percent trust the national government (5 percentage lower than the European average).

2.3. Most important contextual factor: public discourse

The contextual dimension of rule of law resilience is difficult to capture since it combines objective characteristics with subjective perceptions of the social, economic, and political conditions in a country. Accordingly, any accurate analysis requires a longitudinal perspective that can identify the main trends in this regard.

Regardless of the effectiveness and plurality of Spanish electoral processes, Spanish public debate is far from being sound, with civility and mutual tolerance increasingly jeopardised by partisan noise. The application of Dalton's party system polarisation index measure¹⁷ to empirical data repeatedly shows a common pattern: Spain is among the most polarised countries in the world and has one of the highest levels of polarisation over the last 30 years. Since the era of large electoral majorities came to an end in the 1990s, political parties are distancing themselves from each other in a two-bloc ideological retrenchment logic¹⁸ that has increasingly evident and pernicious consequences for a variety of domains. For example, one study has shown that Spain was the country with the high-

est level of party system polarisation on pandemic-related measures in Europe.¹⁹

Obviously, this has an immediate social impact. According to a 2022 report²⁰ by the International Catalan Institute for Peace, the sense of national community in Spain has gradually deteriorated as citizens now report much higher identification with local coexistence (7.22 out of 10) compared to regional (7.02) or national (5.85) coexistence. Moreover, several authors have shown how elite-level ideological divisions are shaping and distancing citizens' positions around policy issues that were far more consensual in the past. For instance, according to Miller, the gap between left- and right-wing voters has grown consistently since 2015 on whether they feel they pay too much tax.²¹ Similar trends of polarisation have been recorded on questions including the territorial organisation of the state²² and gender equality.²³

Similar to other comparable economically advanced democracies, economic growth and prosperity in Spain have not alleviated increasing levels of political polarisation. Despite the relative decrease in income inequality and unemployment since 2015, and the historical improvements in minimum wage levels and national minimum income schemes since 2018, political divisions remain. A neat manifestation of this division pops up periodically in the Spanish Center for Sociological Research Barometers:²⁴ while 60-70 percent of Spaniards consider their personal economic situation to be good or very good, only 30-40 percent of Spaniards hold a positive view of Spain's economic situation, with 40-50 percent holding a negative view. This mismatch between perceptions regarding personal and national economic evaluations illustrates how polarisation can pervade those social attitudes upon which systemic stability is built, generating two opinion blocs that are generalisable to a variety of different issues.

3. Impact of crises on the rule of law: the post-2008 recession and the COVID-19 pandemic

In Spain's relatively recent and short history of democracy, two crises have played a crucial role shaping rule of law resilience. Specifically, both the post-2008 recession and the COVID-19 pandemic had major legal consequences for the country's constitutional order.

In the case of the post-2008 recession, and as part of the Fiscal Stability Treaty signed by all EU member states ex-

cept the Czech Republic and UK, a supermajority in the Spanish Parliament passed Article 135 of the Spanish Constitution in summer 2011. This second amendment to the 1978 Constitution required a balanced budget at both the national and regional levels, bringing debt and deficit limits in line with EU rules. While there is evidence that balanced budget amendments lead to greater fiscal discipline in the long run,²⁵ there is also substantial agreement among social scientists^{26,27,28} that strict annual balanced budget amendments have harmful short-term economic and political effects. The reform was contested by regional governments in Spain, particularly those dominated by regionalist political parties, who considered the reform an unjustified interference in regional authority and a recentralising effort by central government. It was also largely contested by the 15M anti-austerity movement, which at the time was already growing throughout Spain, and which interpreted this legislative initiative as a further step in the technocratic elite-driven response to the crisis. The lack of a national level referendum to support the amendment led to high levels of mobilisation against the reform.²⁹

The COVID-19 pandemic also shook Spanish rule of law. Following other European countries, the central government established a national lockdown as well as the temporary re-centralisation of regional authority in the fight against the virus. While the controversy around the timing of these decisions soon became an issue, the largest tensions concerned the multilevel management of the crisis. The Autonomous Community of Madrid led a concerted campaign against the national government's application of the constitutional instrument (State of Alarm) and restrictions that derived from it. In response to a series of appeals initiated by Vox, the various States of Alarm were later declared unconstitutional by the Spanish Constitutional Court.³⁰ The conflict between regional and central government reached a particularly high level between spring 2020 and autumn 2021.

4. Conclusion

The political divisions that have shaped Spain since its modernisation in the nineteenth century continue to exert a profound influence in the early twenty-first century. These political and territorial centrifugal forces, which have facilitated the country's resilience, as well as institutional progress and innovation through balanced internal competition ever since the transitional period, are now

cause for concern. This precarious situation risks undermining the inclusive and cross-cutting consensus that underpins the 1978 Constitution and the legal and institutional framework that followed its enshrinement. Spanish resilience appears to be grounded in an up till now robust yet prospectively delicate equilibrium: one that acknowledges the diversity of its political and territorial landscape while emphasising the necessity for unity among its constituents to harness the benefits of competition among its heterogeneous components.

The future resilience of the legal system in Spain relies on reducing the current polarisation within the party system. This entails fostering essential agreements among mainstream political forces regarding the approval or renewal of the pending reforms and institutions in question.

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About the author

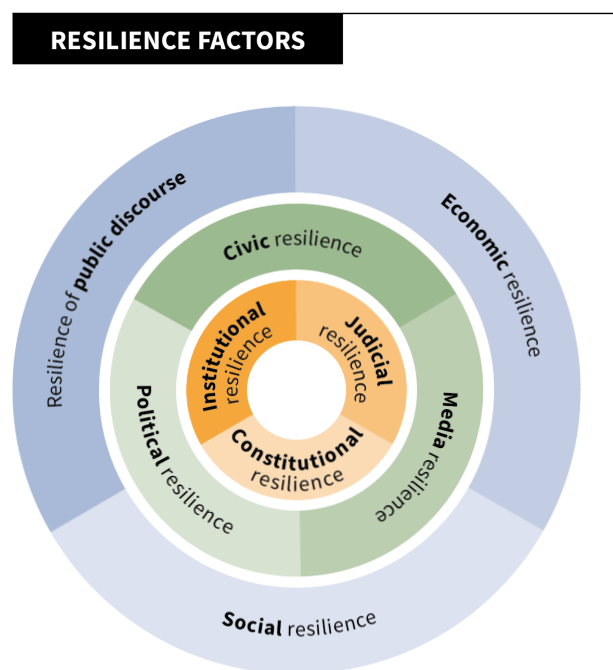
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About the project

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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Resilience observatory
on the rule of law in Europe

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