

# RESILIO Country Report Hungary



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October 2023

### 1. Introduction

The quality of democracy and, more narrowly, the state of the rule of law has been systematically eroded in Hungary over more than a decade since the governing coalition between Viktor Orbán's Hungarian Civic Alliance (Fidesz) and the Christian Democratic People's Party (KDNP) assumed power in 2010 with a two-thirds constitutional majority. Although Hungary joined the European Union in 2004 as a consolidated democracy, the steady decline under the unchecked powers of the Fidesz-led government has essentially reversed the achievements of the post-1989 democratic transformation.

This executive-led autocratisation has also been noted by the major democracy measurement indices. After observing a transition from liberal democracy to electoral democracy (2010-2017), the Varieties of Democracy Institute has, since 2018, assigned Hungary to the electoral autocracy category.<sup>1</sup> Hungary was assessed as a democracy in consolidation by the Bertelsmann Transformation Index when the Fidesz-KDNP coalition took power, but the Index also took note of the downward trend in the country's democratic quality and has subsequently categorised Hungary as a defective democracy since 2016.<sup>2</sup> The Freedom in the World index of Freedom House demoted the country's status from free to partly free following the 2018 parliamentary election,<sup>3</sup> and its Nations in Transit index

assigned Hungary the status of a transitional or hybrid regime in its 2020 report, reflecting on the developments up to 2019 that mark an unprecedented decline in the post-communist Central and Eastern European region.<sup>4</sup>

Since 2010, the measures introduced by the Hungarian government have had a detrimental impact on various aspects of the systemic, subsidiary, and contextual factors that RESILIO considers to be the cornerstones of the rule of law. These ultimately resulted in state capture. The government has undermined the balance of power by eliminating checks and balances via formal and informal means, thus side-lining the institutions and procedures of both horizontal and vertical accountability. Through the governing parties' constitutional majority in parliament, the legislative is subordinated to the goals of the executive and used to uphold a democratic façade. The independence of the judiciary has been undermined on all levels through institutional reforms and by the informal practice of political appointments. The electoral code has been repeatedly altered to disadvantage the opposition and serve the interests of the incumbents, ensuring their grip on power amidst an uneven political playing field. Corruption is rampant and systemic, with the misuse of public funds centred around the governing parties and their networks.

Fidesz's domination of the media landscape is realised through control over public broadcasters and the creation

of a pro-government media empire – often funded by state resources – and challenges media freedom, pluralism, and independence. It further undermines accountability, just like the continuous pressure and intimidation that civil society actors, especially watchdogs, have experienced over the years. In addition to their attempts to silence critical voices, the government and pro-government media have played a decisive role in undermining the quality of public discourse through the use of populist ‘us vs. them’ rhetoric and the narrative construction of domestic and external enemies, engineering constant crises and seeking to instil fear in society. The frequent use of mis- and disinformation has fuelled political polarisation, distrust, and intolerance in the country and serves as a distraction from Hungary’s worsening economic situation. The latter is manifested in the highest levels of inflation in the EU as of 2023, unprecedented since Hungary’s EU accession, as well as the lack of sufficient public sector funding, with education and health care being hit the hardest.

Concerns about the state of democracy and the rule of law in Hungary have also been high on the agenda of the European Union for over a decade, but it took until 2018 for the Article 7 procedure to be launched upon the initiative of the European Parliament. The goal of the procedure is to determine if there is a clear risk of a serious breach of the EU’s fundamental values such as the rule of law in the member state, and advise the member state to address identified shortcomings. Despite several rounds of hearings over the years, however, consultations bore no fruit in Hungary. In fact, the situation further deteriorated to the extent that the European Commission, in 2022, decided to trigger the rule of law conditionality regulation, adopted under the 2021-27 multiannual financial framework to safeguard the EU budget, and froze EUR 7.5 billion of structural funds dedicated to Hungary. To release these funds, the Hungarian government needs to address a series of concerns related to the independence of the judiciary and the fight against corruption, the erosion of which has played a significant role in the deterioration of the rule of law in the country.

Against this backdrop of democracy and the rule of law being fundamentally undermined in Hungary, it is hard to speak of factors that strengthen the rule of law. Instead of providing an overview of the key challenges, a more viable

approach in Hungary’s case is to highlight which aspects of the rule of law have been resisting the government-led attacks, and which factors and actors are preeminent to an eventual restoration of the rule of law in the country. As will be shown below, these are not necessarily the factors that are still the strongest of the various dimensions RESILIO identifies. However, the Fidesz-led government’s continued efforts to weaken and repress these factors signal their central importance for accountability and their potential to drive change, should the opportunity arise.

## **Analysis of the country case along RESILIO model**

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

The RESILIO model defines the systemic dimension of the rule of law to lie at its core and to entail the rules and norms implemented to safeguard the proper functioning of the legal and political order, including institutional, judicial, and constitutional resilience factors.

Considering the democratic erosion that has unfolded in Hungary since 2010, the weakening of the systemic rule of law factors comes as no surprise. The area of judicial resilience – the functioning of the judiciary and judicial independence – has by now been severely undermined, but still displays certain characteristics that are crucial from the perspective of rule of law preservation. The governing parties attempted to influence the personnel composition of the courts as soon as they came into power by abruptly lowering the retirement age for judges, resulting in the early and forced removal of many from their positions. The Court of Justice of the European Union, however, found the practice to conflict with EU law.<sup>5</sup> The Constitutional Court’s powers were also curbed in the early 2010s and over time, Fidesz has fully packed the body with its political nominees.<sup>6</sup> The courts – especially on the lower levels – have nevertheless managed to maintain a level of independence even under such adverse circumstances, but a far-reaching reform package passed in 2019 facilitated further political interference in the work of the judiciary.<sup>7</sup> Among other things, the reform package seriously empowered the Curia, Hungary’s highest court, by introducing a ‘limited precedent system’ that required lower courts to consider the Curia’s earlier decisions and inter-

pretations as precedents. The reforms further ordered the Curia to run a ‘legal unity review,’ presided over by the Curia’s president, should a lower court wish to deviate.<sup>8</sup> Subsequently, the position of Curia president was filled in 2020 by Zolt András Varga, a former Constitutional Court justice appointed by Fidesz who had no previous experience as a judge. Under his auspices, the practice of politically motivated appointments has continued in recent years.

Yet, in a country where democracy and the rule of law have been under attack by the governing elite for over a decade, the importance of remaining islands of resilience in the judiciary cannot be underestimated. In 2022, the National Judicial Council (NJC), which is an independent self-governing body of the courts, reviewed the nomination practices under Varga and upon finding several irregularities and breaches of rules of procedures, spoke out against the practice of political nominations.<sup>9</sup> The NJC also voiced concerns over suspected nepotism concerning Varga’s wife who had been appointed to a position where she dealt with politically sensitive cases, such as those involving NGOs and public interest.<sup>10</sup> As the NJC became increasingly outspoken about the growing political pressure on the judiciary, its members were subjected to an increasingly malign media campaign and criticism from the head of the Curia.<sup>11</sup> Nonetheless, their stance drew attention to the worsening state of the judiciary, which became a focal issue contributing to the launch of the first EU conditionality procedure. Measures to strengthen the NJC’s independence were among the key priorities set by the European Commission for the Hungarian government to deliver on in order to receive structural funds, the disbursement of which was suspended due to Hungary’s mishandling of EU budgetary resources.<sup>12</sup>

Constitutional resilience – constitutional design and constitutionalism – is challenged by the Hungarian government’s unchecked constitutional majority. Hungary’s current constitution, the Fundamental Law, was adopted in 2011 after being unilaterally put forward by the Fidesz party without involving other political forces in the constitution-making process. Thanks to the governing coalition’s two-thirds parliamentary majority, instead of going against the constitutional order, the government can just adopt amendments to the constitution when it seeks to

alter the rules of governance. By November 2023, the Fundamental Law had been amended 11 times, with its 12th amendment currently under discussion in parliament.<sup>13</sup> The frequency and ease of passing constitutional amendments reflect the constitution’s lack of robustness and failure to fill a constraining function over the executive. Although the word of the Fundamental Law is generally respected, the informal practice of politically driven nominations to institutions that are enshrined in the constitution and which would normally provide some control over the executive ensures the executive’s ongoing political control over many bodies including the Media Council, the State Audit Office, and even the president of the republic. Under these circumstances, the factor of constitutional resilience cannot be expected to serve as a safeguard of the rule of law in Hungary.

The illiberal turn in Hungary under Orbán has negatively affected the country’s institutional resilience, as well, regarding the functioning of the state administration as well as the public service ethos. Since 2010, the governmental majority has amended the law regarding public servants several times, ultimately eliminating their employment protections. Meanwhile, the unfolding centralisation of public administration was driven by the government’s distrust of civil servants and a consequent need for control, which in turn increased the role of political considerations and patronage regarding appointments, and the expectation of political loyalty from the bureaucracy. By the early 2020s, politicisation had suppressed the classic bureaucratic culture and ethos and resulted in disciplined, unquestioning execution, eliminating critical voices and resistance within the ministry structures.<sup>14</sup>

## **2.2. Most important subsidiary factor: civic resilience**

The subsidiary dimension of the RESILIO model is concerned with how the rule of law is recognised and realised in the society, and incorporates aspects of civic, media, and political resilience.

Indeed, civic resilience ranks among the subsidiary factors that may matter most in the Hungarian context for safeguarding the rule of law, even though civic trust has experienced some erosion, and the civic space is also under constant governmental pressure. Civil society organisa-

tions, especially those that speak up against governmental activities that undermine democracy – human rights organisations, anti-corruption groups, and media watchdogs – have been working in a hostile environment for the past decade. These organisations and even their staff have been the targets of government and pro-government media demonisation and smear campaigns. They have also been faced with adverse legislation seeking to threaten their operation, such as the so-called ‘Lex NGO’ adopted in 2017. Under this law, civil society organisations that received more than HUF 7 million from abroad would need to register as foreign-funded. The Court of Justice of the European Union found this legislation to be in breach of EU law in 2020, and it was ultimately withdrawn in 2021.<sup>15</sup> However, another law was passed the same year which granted the State Audit Office – led by a political nominee – the authority to audit NGOs with an annual budget of HUF 20 million and over, even though their budgets do not constitute public funding.<sup>16</sup>

Such continuous pressure on the civil sector highlights the importance of NGOs’ work and their key role in ensuring accountability as watchdogs protecting democracy and the rule of law. Indeed, after the Lex NGO was passed, the biggest organisations successfully organised themselves under an umbrella network called *Civilizáció* which called international attention to and protested against the law, the suppression of critical voices, and political intimidation. Ahead of the 2022 parliamentary elections, organisations like Unhack Democracy, Let’s Count Together!, 20K, and Clean Election, ran a mobilisation campaign to recruit and train thousands of volunteers to join electoral committees as party delegates in polling stations across the country. This was to ensure that not only the governing parties but also opposition parties were able to send a sufficient number of delegates to all polling stations to observe election day proceedings and thereby strengthen political resilience. Watchdogs such as the Eötvös Károly Institute, the Hungarian Civil Liberties Union, the Hungarian Helsinki Committee, Transparency International, and several others play a central role in monitoring undemocratic developments in Hungary and providing a reliable account not only for Hungarian citizens but also to international partners on governmental action and its potential consequences. Similar to the islands of independence in the judiciary, these organisations’ resistance to autoc-

ratism hampers the process and serves as a factor that slows down the deterioration of the rule of law – even if it is not able to strengthen it in the current context.

The independence, freedom, and pluralism of media in Hungary were among the first areas that the Fidesz-led government sought to limit as it came into power. The Hungarian media landscape is dominated by pro-government outlets which, since 2018, have been centralised under the Fidesz-connected umbrella organisation of the Central European Press and Media Foundation (KESMA). Pro-government outlets are well-funded not least due to generous state advertising.<sup>17</sup> Moreover, public media (MTVA) fails to fulfil its public service function and experiences both government interference in editorial practices and internal censorship.<sup>18</sup> The Media Council, established under the 2011 media law passed by Fidesz, has a central regulatory role and is filled exclusively by Fidesz appointees, thus ensuring political oversight over how media outlets operate throughout the country. While there remain on the scene a few independent outlets – news sites, online and print papers and magazines – that seek to hold the state accountable and are committed to journalistic ethics, they operate in an increasingly hostile environment, including intimidation and surveillance of journalists, and face financial difficulties.

Hungary’s political resilience is weakened particularly via the aspect of electoral quality. Although elections are free, they are not fair. OSCE election observation missions have characterised them as marred by an uneven playing field since 2014.<sup>19</sup> Not only did the governing coalition fundamentally change the electoral system during its 2010-2014 cycle but it has also amended it several times since, introducing alterations that favoured the incumbents and disadvantaged opposition parties. A key structural challenge for the heavily fragmented opposition is posed by the strong majoritarian elements of the electoral system introduced by Fidesz, especially the high number of parliamentary seats that can be acquired through the single-mandate first-past-the-post districts (106 of the 199 seats) that are also drawn up by the governing party. In this context, given their competitive disadvantage vis-à-vis an electorally overbearing Fidesz, the democratic opposition parties found themselves forced to closely cooperate to stand a realistic chance, and chose to field joint candidates in the

2022 elections. This was, however, not sufficient to offset other adverse features that tilt the playing field toward the government, including its grasp on the media, and the advantage the governing coalition can gain by misusing state channels and funds for party and campaign purposes.<sup>20</sup> These ultimately ensured another constitutional majority for the Fidesz-KDNP coalition, which it can continue to use to further weaken Hungary's political resilience.

### **2.3. Most important contextual factor: the resilience of public discourse**

The contextual dimension enlists factors that have facilitating effects on social peace and, in turn, avert popular support for anti-democratic actors interested in dismantling the rule of law. These include the resilience of the public discourse, and economic and social resilience.

Public discourse resilience in Hungary is undercut by the lack of resilience along various systemic and subsidiary resilience factors, first and foremost the weakness of media resilience. More directly, it is influenced by the high level of political polarisation in the country and the predominant political cleavage between the governing parties and the democratic opposition. This structural dichotomy lends itself to the government's populist discourse that builds on the demonisation of a variety of narratively constructed enemy figures, among them the opposition who, the governing parties claim, would bring about the nation's demise. Beyond the opposition as a whole and former socialist prime minister Ferenc Gyurcsány in particular, further enemy figures constructed by the government have, over time, included the EU (institutions) or 'Brussels,' civil society organisations, independent media, George Soros, migrants and asylum-seekers, the LGBT+ community, and more recently even teachers. These political constructions are fuelled by mis- and disinformation in governmental discourse and pro-government media. Overall, political discourse is characterised by a lack of civility: smear campaigns and ad hominem attacks against political opponents are frequent both during and outside campaign season.

As disinformation is rising in Hungarian public discourse, the role of fact-checking and countering disinformation becomes increasingly important. The first such targeted initiatives, with the Hungarian Digital Media Observatory (HDMO) serving as a key example, are indeed taking off.

Here again, the role and cooperation of civil society organisations, independent media, and research centres as well as the support of the European Union are crucial in strengthening resilience. Through their joint work, the participating organisations run a public fact-checking platform (Lakmusz), research disinformation and the vulnerabilities of the Hungarian society, and also educate journalists, teachers, and the younger generation by providing media literacy trainings.<sup>21</sup>

The quality of public discourse and the portrayal of certain vulnerable social groups – such as the LGBT+ community – as a threat impact negatively on social resilience. Such discourses seek to introduce new, normative dividing lines in society rooted in identity politics and are conducive to generating exclusion. Additionally, the Roma community (Hungary's largest national minority) has been a long-standing target of the hostile far-right rhetoric. Anti-Roma rhetoric and mobilisation peaked in the second half of the 2000s. Although nowadays scapegoating Roma plays a lesser role in public discourse, anti-Roma sentiments that are nonetheless present in society continue to be instrumentalised both by the extreme-right Our Homeland Movement and occasionally by Fidesz, which itself shifted ideologically to the radical right throughout the 2010s. Anti-Roma tropes are typically connected to alleged higher rates of criminality and misdemeanours, and the lack of willingness to work and contribute to society, but their use also does face some pushback from certain parts of civil society willing to mobilise in support of the Roma, signalling the unacceptability of such exclusionary rhetoric.<sup>22</sup>

Hungary's economic resilience – and its economic development overall – has substantially benefitted from the country's EU membership, not only due to the structural and agricultural funds that Hungary receives due to its lower levels of economic development, but also thanks to its membership of the internal market. The latter entails the removal of trade barriers within the EU and the obligation to enforce the EU acquis in the field of competition, which has undoubtedly made Hungary a more attractive investment destination. Despite the economic growth over the past decades, Hungary's GDP per capita is still among the lowest in the European Union (EUR 14,350 in 2022), and is still only about half the EU average according to Eurostat.<sup>23</sup> The country's growth has been fluctuating over the past decade – with the biggest decline experienced in 2020 due

to the Covid-19 pandemic – but was nonetheless showing a positive trend according to the World Bank.<sup>24</sup> Social inequalities have somewhat increased during the Orbán-governments<sup>25</sup> but were roughly at the EU average level in 2022, according to Eurostat.<sup>26</sup> The government’s economic and redistributive policy favours the upper middle class, married couples, and couples with multiple children, while the budget allocated for social and health expenditure has been shrinking. This policy not only serves to underline the government’s socio-culturally conservative worldview and agenda, but also negatively affects vulnerable groups and those in the lower social strata disproportionately.<sup>27</sup>

### **3. Impact of crises on the rule of law: the COVID-19 pandemic and the Russian war against Ukraine**

Crises that occurred during the rule of the Orbán governments have been used to solidify the executive’s grip on power, further side-line institutional checks and balances, and silence dissenting voices. These developments have had harmful effects on various rule of law factors, especially constitutional and media resilience as well as the resilience of public discourse.

In response to the Covid-19 pandemic, the government introduced a special legal regime, a ‘state of danger’ that allowed it to bypass parliament and rule by decree on any matters as long as the government justified the necessity of its actions with reference to pandemic management. Although the force of decrees would normally expire after 15 days under this exceptional legal order, the government also adopted so-called authorisation acts that initially lifted and in later iterations extended the sunset clause to prolong the validity of the decrees – a practice the government repeated several times as the set expiration date drew closer. The government also introduced amendments to the regulations of exceptional legal orders that expanded the grounds on which they could be introduced, while also expanding their possible scope of action. The initial state of danger introduced on the grounds of the pandemic in March 2020 was later replaced by one on the grounds of a medical emergency in June 2020.<sup>28</sup> This then remained in force throughout 2021 and was eventually replaced in May 2022 by a new order on the grounds of ‘war of humanitarian catastrophe in a neighbouring country.’

The governing parties introduced this justification into the Fundamental Law the same month, seizing the opportunity provided by Russia’s full-scale invasion of Ukraine.

In particular, during the first wave of the pandemic, the government took extensive advantage of its expanded powers, but also used the situation to pass controversial legislation without drawing much public attention. It passed decrees on matters not related to the pandemic, such as the takeover of the management of a private packaging company<sup>29</sup> or the establishment of special economic zones in the country;<sup>30</sup> the latter was also later enacted as law. Furthermore, the government limited the access of independent media to information regarding the official response to the pandemic and also passed an amendment to the Criminal Code that threatened those spreading ‘false information’ about the pandemic with prison sentences. Due to its ambiguity, the latter led to self-censorship among journalists and discouraged sources from sharing information. Both measures put pressure on the media and contributed to the deterioration of public discourse as they hampered transparency and accountability.<sup>31</sup> Moreover, since Russia’s full-scale invasion of Ukraine, the government and pro-government media have actively generated disinformation that further undermines public discourse. During the 2022 parliamentary election campaign, for example, they accused the opposition parties of seeking to drag Hungary into the war.<sup>32</sup>

As of autumn 2023, Hungary still operates under a special legal order that continues to lend the government unprecedented and unchecked powers to use as it pleases. Thus, what should in theory be an exceptional situation has gradually developed in practice into the new normal, side-lining checks and balances and accountability, and fundamentally damaging the rule of law.

### **4. Conclusion**

Hungary serves as a case study of rule of law erosion not by overt breach but by its covert subversion. Constant changes to the rule of law serve the interests of the incumbent government, thus the spirit of the law is continuously undermined. This development is rooted in the governing parties’ constitutional parliamentary majority that has ultimately sufficed to eliminate checks and balances from

the system and capture the state, severely damaging the systemic factors of rule of law resilience. This acquisition of control over institutions and, not the least, financial resources has helped to tighten the executive's grip on subsidiary factors, such as media and civic resilience, and undermined the country's political resilience. It also has a dominant influence on the overall development of society which are reflected in the state of the various contextual factors.

Against this backdrop, the most important sources of rule of law resilience remain those actors who have managed to retain their independence, despite operating in a shrinking space, such as the lower courts or the National Judicial Council, or actors who have criticised the government for its authoritarian measures since 2010, like watchdogs and civil society organisations. While these domestic actors have played an instrumental role in resisting the unfolding autocratisation, EU institutions, including the European Commission and the Court of Justice of the European Union, have also slowed down the erosion of the rule of law and function as a restraining external factor. To date, however, neither internal nor external factors have proved sufficient to halt, even less to reverse the erosion of the rule of law in Hungary.



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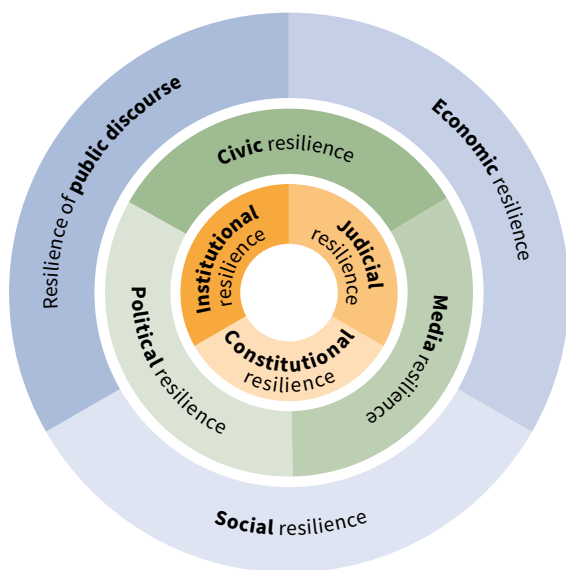
### About the project

**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 analysis

This paper is part of **RESILIO Country Reports 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.

#### RESILIENCE FACTORS



**RESILIO** offers a multi-layered model of 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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on the rule of law in Europe

RESILIO is implemented by Institut für Europäische Politik in Berlin and funded by Stiftung Mercator.

For more information, visit the project website: <https://iep-berlin.de/en/projects/future-of-european-integration/resilio/>

