

# RESILIO

## Country Report

### Slovenia



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## **RESILIO Country Report – Slovenia**

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From March 2020 to the end of May 2022, Slovenia was governed by a minority coalition government led by Prime Minister Janez Janša, the president of the right-wing Slovenian Democratic Party (SDS). Janša's government relied on parliamentary support from the extreme right Slovenian National Party (SNS), and two deputies from the Hungarian and Italian minorities. The government took office just one day after Slovenia declared COVID-19 an epidemic.<sup>1</sup> While the governing parties and opposition parties had rarely cooperated before, after 2020 the political climate deteriorated dramatically.

Throughout the pandemic, the government limited access to legal and oversight offices by designating certain procedures not urgent, which led to limited oversight over its decisions and policies, especially in the field of data and privacy protection. The government also stopped regularly publishing legislation and government decisions, resulting in reduced public access to information and democratic participation. Most governmental regulations that were subsequently challenged at the Constitutional Court were annulled, or the Court ordered that the parliament and government correct the unconstitutionality. Furthermore, a number of corruption cases erupted concerning the purchase of pandemic-related medical equipment and services, in which serious allegations were levelled against government representatives.<sup>2</sup>

In December 2021, the European Parliament adopted a resolution<sup>3</sup> on fundamental rights and the rule of law in Slovenia, which addressed several threats to democracy and media freedom. These included: media defunding, online harassment, strategic legal actions (SLAPPs), threats against critical voices, the delayed appointment of prosecutors to the European Public Prosecutor's Office, delayed appointments of state prosecutors to relevant investigations, the proliferation of illiberal political movements, and corruption.

Following the April 2022 parliamentary elections, a new government led by Prime Minister Robert Golob committed to broader media reform. New initiatives were introduced to promote the independence of public media, replacing the earlier hostile measures and toxic environment for journalists. Amendments to the law on the public service broadcaster, RTV Slovenia, were adopted by the new government and endorsed by the majority of voters in a referendum.<sup>4</sup> The new government repealed the previous administration's regulation on funding the public service of the Slovenian Press Agency (STA), which had allowed the Government Communication Office (UKOM) to take arbitrary decisions on the agency's public funding. In the meantime, the campaign promise of financial support for professional journalism has not yet been realised. Funds in the existing annual funding scheme for media content production have even decreased.

Checks and balances saw little to no progress in 2023. In spite of small improvements, neither the former nor the current government respected the relevant national provisions concerning the duration of public consultations in the process of adopting laws and regulations.

The change of government brought about a more favourable and improved climate for Slovenian civil society. The new government, for example, has revoked the former administration's orders regarding the preparation and filing of lawsuits for the reimbursement of police costs at unregistered protests. These proceedings – which targeted, for example, one of the most visible individuals attending the Friday cycling protests – were halted.

According to the latest monitoring by the CSO initiative Voice of the People of campaign promises, although the new government has fulfilled its commitment by adopting the Whistle-blower Protection Act, its promise to introduce anti-corruption measures remains unfulfilled. The commitment to prohibit any political interference in the work of the police, the prosecution, the judiciary, and other independent institutions also remains unaddressed. Moreover, the Prime Minister is currently under investigation by the Anticorruption Commission for alleged interference in the work of the police.<sup>5</sup>

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

### **2.1 Most important systemic factor: constitutionalism**

The principle of the division of power between the legislative, executive, and judicial branches of government is one of the fundamental principles of a democratic legal state. In many places, it is the constitution that defines in more detail the functions and mutual limitations of state power, not only in terms of its function and organisation, but also concerning personal restrictions or incompatibility of functions. Of particular importance in Slovenia are the constitutional provisions on constitutionality and legality, the Constitutional Court, referenda, local self-government, the Ombudsman, the Court of Auditors, the Central Bank, and parliamentary investigation.<sup>6</sup>

Although the President of the Republic belongs to the executive branch of government, under constitutional provisions s/he has an independent position vis-à-vis the National Assembly.

For the most part, members of the Slovene executive respect the constitution and act in accordance with their constitutional powers. However, there have been cases, especially during Covid-19 pandemic, of unconstitutional regulatory provisions and administrative or other acts adopted by the government or its ministers in the past. Furthermore, while prima facie unconstitutional laws are sometimes adopted by the National Assembly – despite objections from the legislative and legal service of the National Assembly, legal scholars, and the interested public – these laws are often later declared unconstitutional by the Constitutional Court. Such violations of the constitution by members of the executive (i.e. government or ministers) are not frequent and, for the most part, do not constitute a severe violation of constitutional principles or constitutional rights and freedoms. The exceptions were the decrees and regulations adopted by the (former) government during the COVID-19 epidemic, which were later declared unconstitutional by the Constitutional Court.

Members of the executive generally do not face legal consequences for adopting unconstitutional regulatory provisions or other acts, but they might be criminally and (personally) civilly liable in cases of intentional gross unconstitutional conduct (i.e. criminal offenses against official duties, public powers, and public funds). Furthermore, the National Assembly may impeach the Prime Minister and ministers at the Constitutional Court for violations of the constitution.

The separation of powers is enshrined in Paragraph 2, Article 3 of the Slovene constitution, which ensures adequate checks and balances between the legislative, executive, and judicial branches of the government. Executive powers are, in almost all cases, effectively limited by the judiciary. An injured party has the right to seek redress for the violation of its constitutional rights and freedoms by the government in an independent and impartial judicial proceeding. The constitutionality (and legality) of administrative or other acts may be challenged before the Administrative Court, which exercises full jurisdiction. Fur-

thermore, executive powers are adequately limited by the legislature, which may trigger interpellations or motions of no confidence. However, executive powers are not effectively limited by other mechanisms, such as Court of Audit reports or Commission for the Prevention of Corruption findings. Such reports or findings generally have no direct legal consequences for members of the executive, except for a fine for a potential misdemeanour. However, they may lead to criminal proceedings or have political consequences.

Non-governmental organisations may participate in individual (administrative) proceedings and have the prerogative to challenge certain administrative or other acts before the Administrative Court as guardians of the public interest (e.g., in the environmental field). Furthermore, NGOs may – provided they have a legitimate interest – challenge a regulatory provision before the Constitutional Court in an abstract constitutional review. NGOs also have the right to access public information in accordance with the Public Information Access Act. However, none of the government's branches respect the deadlines set out in the Public Information Access Act for providing public information, which makes it harder for NGOs to monitor the activities of the government.

In accordance with Paragraph 1, Article 140 of the constitution, local self-government is granted the autonomy to regulate local affairs (vertical division of power). Local communities thus have the prerogatives to independently regulate and exercise authority over local public affairs. However, local authorities are only allowed to supervise the legality of the conduct of their own communities. The constitutional relationship between the state and local government demands that the state – either through the legislature or executive – does not interfere with or threaten the autonomy of the local community. Furthermore, the Constitutional Court has the prerogative to declare such interference unconstitutional.

The transition of power is regulated by the constitution and, in more detail, in the Rules of Procedure of the National Assembly. So far, there have been no major setbacks or (constitutional) crises during the transitional period in practice.

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

The citizens of Slovenia trust in the overall principles of liberal democracy, as evidenced by the high voter turnout in 2022. This “super-election year” saw all three elections (parliamentary, presidential, and local) and the triple referendum reaching the highest voter turnouts in Slovenia's history. Unlike previous campaigns, the parliamentary elections revolved more around the content of political programmes than aiming strikes at political opponents. This was very much related to the intense civil society engagement through the informal network Voice of the People, through which over 100 NGOs initiated broad public debate. This resulted in around 130 demands towards the new government. A large part of the election debates was therefore also shaped by these demands and topics, covering the most important areas of public interest (rule of law, climate change, housing, health care, etc.).

Slovenian society is also very committed to volunteer work. Slovenian volunteers operating within the framework of voluntary organisations and public institutions carry out almost ten million hours of voluntary work per year.<sup>7</sup> However, taking into account the voluntary work carried out on a spontaneous (non-organised) basis, this figure is most probably much higher.

Trust in political parties varies greatly, and depends on the length of the government's mandate and current issues, but is generally falling. The exceptions are individual cases, like governmental response to floods.<sup>8</sup>

Slovenia has over 27,300 NGOs (associations, institutes, and foundations), which is one of the highest rate per capita in the EU.<sup>9</sup> Political liberties are constitutionally protected and guaranteed, and generally respected by government institutions. The right to assembly and association, for instance, can only be restricted in very specific and well-justified cases. A 2018 law on NGOs enables them to obtain public benefit status, while also determining basic measures that aim to strengthen and encourage the development of the civil society sector. Equally important is that the law also establishes a special fund for NGOs, which automatically draws funds from the non-distributed part of income tax donations.

In the last three years, civil society has been a key factor in protecting democracy and defending the rule of law and fundamental rights in Slovenia. Civil society has used all available procedures, from using legal remedies, protesting, raising awareness about the importance of elections, and reporting to international institutions and organisations. Civil society was the driving force behind the high voter turnout at the Waters Act referendum (April 2021), parliamentary elections (April 2022), and the three-part referendum on the laws on government, the Public Broadcaster Act, and long-term care (November 2022).

Public trust in civic actors significantly increased as a result of popular campaigns run by non-governmental organisations and networks, such as the Institute 8 March, Voice of the People, and Legal Network for the Protection of Democracy.

With the help of several lawyers, the Legal Network for the Protection of Democracy (a coalition of five NGOs) disputed hundreds of police fines based on the previous government's COVID-19 decrees that were deemed unconstitutional by the Constitutional Court. Most of the cases were won. At the end of November 2022, the government confirmed the preparation of the legal basis necessary for the repayment of all fines and the costs of misdemeanour proceedings and forced recovery, which were introduced during the pandemic on defective or unconstitutional legal grounds.

At the same time, smear campaigns against NGOs were and still are present, initiated by the right-wing SDS party. These campaigns are often carried out through media and other communication channels close to the SDS. Due to the increase of smear campaigns, a working group in the Ministry of Justice is discussing a re-definition of hate speech in the Criminal Code, signalling the government's intention to fight against hate speech. Furthermore, new media legislation is also set to address issues of hate speech in the media.

Civil dialogue was severely hindered by the Janša government. For example, government consultation deadlines were breached in 70 per cent of cases,<sup>10</sup> with some of the regular working groups abolished or NGO representatives excluded from them. The new government reinstated sev-

eral of them and also established a few new ones. Some ministries also appointed liaison officers for cooperation with NGOs. Simultaneously however, the current government has not fared better than the previous one in terms of respecting consultation deadlines. Breaches currently stand at 63 per cent.<sup>11</sup>

### **2.3 Most important contextual factor: social resilience**

Slovenia is still a largely homogenous society with few non-European communities. Integration measures are mostly targeted at refugees and citizens of former Yugoslav republics and Albania. Integration and migration policies are handled separately as integration is not perceived as an integral part of migration policy. On the one hand, the government is concluding agreements with other countries (e.g. Philippines<sup>12</sup>) in order to import foreign workers. On the other, it is restricting access to the labour market for asylum seekers or migrants with irregular status.

The Slovene political system is framed by the election law which is not inclusive, meaning that individuals without Slovene citizenship can only participate in elections at the local level. The composition of the parliament is quite homogenous, as is Slovene society. Of the 90 members of parliament, there are 35 women and two representatives of minorities (Hungarian and Italian). The youngest MP is 22 and the oldest is 74.<sup>13</sup> The level of MPs' education is decreasing: fewer and fewer have attained the highest level of education.<sup>14</sup>

The main social cleavage is political affiliation, which is one reason behind rising polarisation and discrimination. This is also related to religious status as right-wing parties strongly support the Catholic Church and its greater political role in the public life, which is strongly opposed by the left. Anti-migration sentiment is growing and is already affecting legislation, even in breach of the Slovene constitution. Opponents of the LGBTQI+ community also generate large amounts of hate speech. The 2023 Pride march in Ljubljana, the capital city, was followed by numerous violent and hateful acts, which had not been the case in the past.<sup>15</sup>

### **3. Impact of crises on the rule of law: 2023 Slovenia floods**

In August 2023, Slovenia faced immense floods. Many people lost their homes, property, or even lives. This was the biggest natural disaster in the country's history and created an atmosphere of crisis, in particular related to climate breakdown. Future prevention measures, both directly concerning infrastructural solutions as well as the response to climate change were publicly debated. The event also triggered huge solidarity actions. Numerous volunteers worked together to help people whose houses were flooded. Fear among the general public resulted in more action on issues such as introducing heavy rain early warning systems. Climate change anxiety is strong.

The cost of energy crisis is another emerging fear, especially among individuals and families who are already suffering material deprivation. Although the government is addressing the problem through different short-term subsidies, confidence has not yet been restored.

All crises are instrumentalised either in favour of the ruling party or by the opposition (to expose the incompetence of the ruling party). In some cases, the media (both public and commercial) play a moderating role. Yet, on many occasions, media owned by the members of the SDS utilise crises to polarise the public even more.

In the cases of natural disasters or the pandemic, the public is at first united that solidarity should prevail, that everybody needs to somehow contribute, and that a common challenge must be overcome by the nation. But quite quickly, political calculations divide public opinion, and polarisation is exacerbated from one crisis to the next. Conspiracy theories increasingly win supporters. Disinformation, especially regarding migrants for example is used mostly by populist right-wing politicians who often use inaccurate or even fake news to get attention<sup>16</sup>. This is especially common on social media platforms like X, or in Facebook posts by members of parliament and other political figures on the right-wing fringe of the political scene.

### **4. Conclusion**

The last three years have been a challenge to the rule of law and democracy in Slovenia, tested by Covid-19 epidemics, and even more so by the autocratic government of Janez Janša. After the super-election year 2022, with one of the highest turnouts in the history of the young state, progress has been made towards improving the rule of law, democratic governing, and civil dialogue. But not everything is going as promised during the election campaign.

This analysis has focused on the importance of a solid legal framework, especially the constitutional principles and rules laid down in the constitution, which represents one of the core factors of rule of law resilience and firewalls against the attacks on the rule of law. It was the Constitutional Court that played the decisive role in preserving the rule of law and democratic principles during the Janša government.

But much of this would not have happened if not for civil society and various forms of civic engagement, such as protests, mobilising people in election campaigns to exercise their voting rights, campaigning in referendums, organising networks of NGOs, and using legal remedies as a tool to protect the rule of law and democracy. The positive change in the super-election year was largely brought about thanks to the efforts of civil society.

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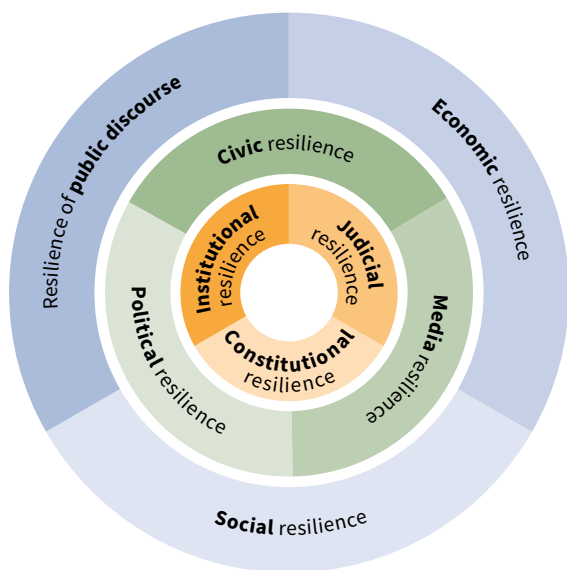
### About the project

**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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