

RESILIO

Country Report

Romania



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1. Introduction

According to its Constitution¹, Romania is a republic organised according to the principle of the separation and balance of powers - legislative, executive and judicial - within the framework of a constitutional democracy. The parliament exercises the legislative power and is composed of two chambers: the Chamber of Deputies and the Senate. The government, led by the prime minister, and the president both exercise executive power. Both the president and members of parliament are elected through universal vote. The prime minister is appointed by the parliament, at the proposal of the president, after consultations with the political parties in parliament. Judicial power is exercised by judges and prosecutors. Judges and prosecutors comprise the larger category of magistrates, who are protected by law and benefit from certain essential guarantees. The Constitutional Court, which is not part of the judicial branch, exercises constitutional review.

According to the World Justice Project's Rule of Law Index, Romania ranks 40² internationally and 27th overall in the EU, EFTA and North America Region, having dropped in the rankings after the COVID-19 pandemic when it ranked no. 32 in 2020.³

Romania joined the European Union on 1 January 2007. Because Romania (and Bulgaria) still had to make progress in the fields of judicial reform and the fight against corruption, the EU Commission set up the Cooperation and Verification Mechanism (CVM)⁴ as a transitional mea-

sure to assist the two countries in remedying these shortcomings. The benchmarks for Romania dealt with the effectiveness and transparency of the judicial system, key institutions in areas like integrity and the fight against corruption at all levels, and corruption prevention. Both EU accession and the CVM created the context for the adoption of many necessary reforms in Romania. However, the risk of backsliding has been a constant concern raised by the EU Commission under the CVM.⁵ The CVM was finally lifted in 2023. However, in its last report of 2018, the Commission underlined the importance of the Romanian government's commitment to consolidate, in an irreversible manner, the progress achieved so far in guaranteeing the independence and efficiency of the justice system, as well as the track record in combatting corruption,⁶ which will continue to be monitored under the Rule of Law Report.

Unfortunately, many resilience factors have come under extreme pressure in recent years. The backsliding of important reforms in the justice sector, shrinking civic space and independence of the media, as well as the decreased transparency and accountability of public institutions have had a major impact on the rule of law in Romania. Recent crises, such as the COVID-19 pandemic and the war in Ukraine, have challenged Romania's capacity to uphold the rule of law and to ensure effective access to rights. This report will attempt to identify the most important resilience factors, while at the same time presenting the challenges Romania faces.

2. Analysis of the country along RESILIO model:

2.1. Most important systemic factor: judicial resilience

In Romania, the most important systemic resilience factor in the last decade has been the judiciary. Despite the many challenges it faces at present, the Romanian judicial system has proven that it can effectively fight corruption, and has strongly defended its independence against attempts by politicians to capture it.

The Romanian judiciary system is composed of courts and prosecution offices. Judges and prosecutors comprise the larger category of magistrates, who are protected by law and benefit from certain essential guarantees. The courts are divided into four levels: district courts, tribunals, courts of appeal, and the High Court of Cassation and Justice (HCCJ), which hears both criminal and civil cases. The HCCJ also ensures the uniform interpretation and application of the law.

The Public Ministry, led by the General Prosecutor, represents the general interests of society and defends the rule of law and the rights and freedoms of citizens. It is responsible for prosecuting criminal cases and overseeing police investigations. The duties of the Public Ministry are exercised through prosecutors organised in prosecutors' offices, attached to each of the courts, the highest being the Prosecutor's Office, which is attached to the High Court of Cassation and Justice (PHCCJ). There are two specialised and autonomous prosecution structures which function within the PHCCJ: the National Anticorruption Directorate (DNA) and Directorate for Investigations against Organized Crime and Terrorism (DIICOT), both led by a chief prosecutor. The Prosecutor General and the Chief Prosecutors of the specialised structures, DNA and DIICOT, are appointed by the president of the Republic, upon the proposal of the Minister of Justice and after having received a non-binding opinion of the Superior Council of Magistracy.

The Superior Council of Magistracy (SCM) is a self-governing body in the judiciary, whose main task is to guarantee judicial independence.⁷ It is composed of 19 members: 14 are elected by judges and prosecutors in general assemblies of magistrates, 2 representatives of civil society, plus the Minister of Justice, the President of the HCCJ, and the General Prosecutor. The SCM is divided into two sections, one for judges and one for prosecutors. Each section has exclusive competence for the recruitment and management of the careers of judges and prosecutors respective-

ly, and acts as a disciplinary court in first instance. The Judiciary Inspection conducts disciplinary investigations, but the SCM decides whether a disciplinary sanction should be applied.

The functioning of the judiciary is regulated by three laws, known as the Justice Laws, which were first adopted in 2004 as a precondition of Romania's EU integration process. The justice system underwent profound reforms prior to accession, and continued after 2007 in the context of the CVM. These reforms strengthened the independence and capacity of the justice system and enabled the fight against corruption. The National Anticorruption Directorate (DNA), the anticorruption specialized prosecution unit, was also created in 2002 as part of the pre-accession process with the competence to investigate all types of corruption, a broad mandate which limited its efficiency in the first years of existence. Legislative amendments in 2005 restricted the DNA's competence to high-level corruption cases, and a new chief prosecutor was appointed under a competitive and transparent appointment procedure. These changes made it possible for the DNA to start investigating high level corruption, which yielded the first convictions through final court decisions several years later.⁸ By 2013, high-level politicians had been convicted for corruption in Romania.⁹ The fact that powerful politicians were being held accountable by the justice system was unprecedented for Romania. This resulted in an increased trust of the society towards the justice system and the DNA in particular.¹⁰

Inevitably, politicians started to fight back by trying to weaken the independence and capacity of the justice system and the fight against corruption. These attempts were met by a strong response from civil society and the justice system itself, with many protests taking place in support of the justice system and the fight against corruption between 2015-2019. In February 2017, when the government tried to decriminalise corruption offences through an Emergency Ordinance overnight, 500,000 people protested in the streets for almost two weeks until the government repealed the ordinance.¹¹

In 2018, when the Ministry of Justice initiated a controversial reform of the justice system which weakened the independence of the judiciary, judges and prosecutors publicly protested against these changes.¹² Society at large took to the streets to protest as well, rallying behind the justice system. Despite the protests, parliament adopted the law which introduced many controversial and criticised chan-

ges. Among these changes, a new specialised prosecution unit was set up: the Special Section for the Investigation of Crimes committed by magistrates (SIIJ) which had the power to take over any criminal case which involved a magistrate, including corruption cases. The creation of this Special Section was heavily contested by both prosecutors and judges, as well as international bodies (European Commission,¹³ the Venice Commission¹⁴ and GRECO¹⁵). The Venice Commission questioned the need for emergency legislation in justice-related matters and the need to set up a Special Section for the investigation of magistrates, as well as the lack of checks and balances in the appointment procedure for key positions in the prosecution.¹⁶ Other critics feared it would be used to intimidate judges and prosecutors who spoke out against justice reforms.

By 2019, the overall political context had come to be dominated by reforms of the justice system and attempts to weaken the anti-corruption legal and institutional framework. In May 2019, and in the context of EU parliament elections, the president even called for a national consultative referendum on anti-corruption and justice related matters.¹⁷ The participation rate exceeded 40% and the acceptance rate was approximately 85%.¹⁸ The referendum was declared valid and the large approval rate reinforced the anti-corruption agenda.

After the 2020 general elections, a new government coalition had committed to reverse many of the damaging reforms and consolidate the justice system and the fight against corruption. However, some of the new reforms failed to address the challenges and continued to undermine the rule of law. Much like the highly criticised reforms of 2018, the government adopted new justice laws and submitted them to parliament in 2022, without organising public debates. It also failed to request the Venice Commission's opinion, as it had committed to do. The Parliament adopted three laws, over 600 articles, under a fast-track procedure. Unfortunately, the successive crises that had started in the meantime, namely the COVID-19 Pandemic and the neighbouring war in Ukraine, had shifted priorities for the already fatigued Romanian society, after years of protesting in the streets for the same issues. The war in Ukraine also significantly changed Romania's geopolitical position in the EU, which meant the European Commission became much more lenient in its evaluation of the adopted reforms.

In its three years of existence, SIIJ has only sent five cases

to court, out of a total of around 6,400 cases pending.¹⁹ The SIIJ was finally dismantled in 2022 but its competence did not return to the initial prosecution offices, but to a new structure which has thus far proven equally inefficient.

After those turbulent years, the justice system is currently struggling with various challenges. The most urgent is a severe lack of human resources which threatens to impact on its proper functionality. This is partly due to the massive retirement rates of experienced judges and prosecutors who, until recently, could retire after 25 years of seniority, with a pension at 80% of their gross income. While magistrates strongly defended this retirement scheme, society at large considered it an unjustified privilege, a debate which has influenced the public's perception of the justice system. The reform of the 'special pensions' of magistrates and other public employees was initiated in 2023 as a commitment made by Romania under the NRRP. and resulted in the retirement of over 464 judges and 256 prosecutors in 2022, double the figures of previous years.²⁰

The perception of the justice system has also been negatively influenced by major cases in court which have been perceived by the public as inefficient: the 1989 Revolution case,²¹ the *kompromat* case against journalist Emilia Șercan²² or the court decisions dismissing sexual offences cases against minors on account of them consenting.²³ Most recently, many corruption cases have been closed because provisions regarding the statute of limitations were declared unconstitutional, and the parliament failed to amend the Criminal Code between 2018-2022.²⁴ Nevertheless, Romanians continue to have trust in the justice system. According to a 2023 Flash Eurobarometer, 51% of Romanians rate the justice system (in terms of independence of courts and judges) as good (45% of Romanians as fairly good, and 6% as very good).²⁵

2.2. Most important subsidiary factor: civic resilience

Of the three subsidiary factors, civic resilience performs better than media or political resilience.

In Romania, civil society has played an important role in defending the rule of law. Between 2015 and 2019, citizens participated in multiple protests in support of the fight against corruption, and for the justice system and the rule of law. The most powerful protests took place in 2017 in response to the government's attempt to decriminalise corruption offences. The then government passed a Go-

vernment Emergency Ordinance (GEO) overnight – GEO 13 – which sought to decriminalise several corruption-related offences. This would have benefited several high-level politicians, including the leader of the governing political party at the time, the Social Democrat Party (SDP). The public viewed the adoption of the GEO as an act of impunity for people in power, and it generated massive protests all over the country. In February 2017, over 500,000 people gathered in front of government buildings to protest, which lasted over two weeks, until the government agreed to repeal the GEO.

Non-governmental organisations (NGOs) have also been actively involved in the reform process of various public sectors – justice and anticorruption, public administration, energy, minority rights, elections etc. – demanding increased transparency, accountability and proper debates around important reforms.

In context of the war in Ukraine, Romanian citizens and NGOs were the first to offer support to refugees, gathering at the border points and providing food and offering shelter to those seeking safety immediately after Russia invaded in February 2022.²⁶ Prior to the war, most NGOs involved in the humanitarian response had no previous experience of managing humanitarian crises or aiding refugees, and the few organisations with such expertise usually served a limited number of beneficiaries compared to the current situation. NGOs responded to the needs of Ukrainian refugees in areas such as social protection, education, health, employment, and housing, and have tried to provide an integrated approach, many of them developing new services to provide much-needed support.²⁷

However, NGOs have constantly operated in a shrinking civic space with considerable challenges and pressures. There have been many attempts to modify legislation on the functioning of NGOs (Government Ordinance 26/2000) with the purpose to increase pressure on NGOs and limit civic space. In November 2022, a draft bill was initiated that would negatively impact NGOs' ability to bring any possible illegality of acts by public institutions before the courts. Among the most controversial provision of the draft law was a stipulation that the NGO which initiates court action to annul administrative acts should make a deposit of 1% of the value of the investment (for challenges to investment projects); and, should the court dismiss the case, the patrimonial liability of the board of directors could be triggered. A total of 160 NGOs and citizens' groups signed a public letter asking the initiators of the le-

gislative proposal to withdraw their draft bill.²⁸ While this bill was indeed dropped, the Romanian parliament adopted another law, under emergency procedure, which limits the capacity of NGOs to challenge illegal building permits and planning documents in court.²⁹ This law was a response by real estate developers to the fact that, in recent years, citizens and NGOs have mobilised to defend public spaces in their cities and neighbourhoods by overturning illegally issued building permits in court, stopping construction projects that were being built illegally.

The use of SLAPPs³⁰ is also of concern. The most recent and visible case involved the Save Bucharest Association, an NGO that had supported a group of citizens in Bucharest to contest the building permit obtained by a big real estate developer. After losing the case, the court ordered the Save Bucharest Association to pay legal fees of EUR 10,000. Since the NGO was unable to pay this sum, the real estate developer asked for its dissolution. A social media campaign in December 2023 managed to raise the money to pay the legal fees requested. However, in 2022, the same real estate developer had managed to dissolve another NGO (Miliția Spirituală Association) involved in the case for not being able to pay the legal fees either. This type of conduct aims to discourage civil society organisations and citizens from initiating legal actions.

2.3. Most important contextual factor: economic resilience

In Romania, the most important contextual factor is economic resilience. In 2022, Romania ranked 12th among 27 EU Member States in terms of GDP, with a value of around EUR 286 billion.³¹ Over the past two decades, Romania has made significant progress in improving its economic performance and prosperity, converging living standards with those of the EU.³² This conclusion is also supported by the Catch Up Index, developed by the Open Society Institute in Bulgaria which measures the convergence or divergence of 'new' EU members with countries from Western Europe using four dimensions: economy, democracy, quality of life, and governance.³³ According to the index, most changes in the EU10+1 countries happened between 2011 and 2019.³⁴ EU accession has enabled Romania to achieve economic progress at a pace that would not have been possible otherwise. In 2021, the EU11 countries, including Romania, outperformed their counterparts outside the EU – i.e. the other former socialist bloc states – across the board, performing better than candidate countries and those with no prospect for EU membership in all catego-

ries.³⁵

However, Romania faces various challenges that prevent it from achieving a more inclusive and economically and environmentally sustainable growth: institutional vulnerabilities, lack of skilled labour, inefficient connectivity, low resilience to natural disasters and the effects of climate change.³⁶ For example, in 2023, the transparency of budgetary allocations was significantly weakened. Instead of rectifying the budget, the government decided to increase the Reserve Fund with approximately EUR 6.4 billion, 10 times higher than the historic maximum of 2020, which does not require parliamentary debate. Although the purpose of the Reserve Fund is to fund critical emergencies, the sums were actually allocated for salary increases in education, transport, intelligence, or healthcare. Moreover, in 2023, the Government directed EUR 70 million to investment programmes managed by the Ministry of Development, Public Works and Administration. These investment programmes have a history of weak procurement controls and discretionary allocation, and are targeted preferentially to friendly local governments and contractors. For examples, programmes such as Anghel Saligny and the National Program for Local Development have been constantly criticised by civil society for a lack of performance oversight and encouraging clientelism at the local level.³⁷

In addition, recent crises such as the COVID-19 pandemic and the war in Ukraine have had a significant impact on Romania's economy, generating a high inflation rate and a rise in food and energy prices, which have further deepened social inequalities. In 2020, the Gini index of equivalised disposable income for Romania reached one of the highest scores in the EU, at 34.3.³⁸ In 2022, Romania had the highest rate of people at risk of poverty or social exclusion in the EU, at 34%.³⁹ While access to basic rights and public services such as health and education is guaranteed in principle by law, vulnerable communities struggle to effectively access them. Bureaucracy, discrimination, and a lack of adequate support threaten to perpetuate existing inequalities and further fuel social disparities.

3. Impact of crises on the rule of law: COVID-19 pandemic

The COVID-19 pandemic deeply impacted societies around the globe, testing the capacity of governments to uphold rule of law in times of crisis, while at the same time shining light on the existing weaknesses. The European Commission noted that the response to the pandemic in

EU member states was a true 'stress test for rule of law resilience'.⁴⁰ In its view, the analysis of the rule of law resilience during the pandemic should look at whether 'measures were limited in time, whether safeguards were in place to ensure that measures were strictly necessary and proportionate, and whether parliamentary and judiciary oversight as well as media and civil society scrutiny could be maintained'.⁴¹

In Romania, the low quality of the legislative process and its lack of predictability created the context for the application of abusive restrictive measures. The Constitutional Court played a key role in ensuring that measures taken by the government fell within the margins set by the Constitution and the European Treaties.⁴² In short, when the pandemic started, Romania's legal framework for emergencies – GEO no. 1/1999⁴³ – proved inadequate for regulating pandemic-related governmental actions. Under GEO/1999, in a state of emergency, the Minister of Internal Affairs is granted the power to adopt military ordinances and orders to introduce the necessary restrictions. Military ordinance 3/24.03.2020 introduced restrictions prohibiting the movement of all persons outside of their home with very few exceptions. At the same time, GEO 1/1999 was amended through GEO 34/2020, significantly increasing the limits of fines to four times higher for natural persons, up to almost EUR 5.000, and ten times higher for legal persons, up to EUR 14,000 (art. 28 of GEO no. 1/1999). The press started reporting about alleged police excesses while applying sanctions, which varied considerably from county to county. By 4 May 2020, the total value of sanctions applied had reached over EUR 120 million.⁴⁴

In May 2020, the Constitutional Court declared Art. 28 of GEO no. 1/1999 and GEO no. 34/2020 in its entirety unconstitutional.⁴⁵ The Court argued that sanctioning laws should be clear, predictable, proportionate, and comprehensible to the general public. Art. 28 of the GEO no. 1/1999 provides for the same sanctioning regime for all breaches of the restrictions and thus allows the enforcement officer excessive discretion in deciding if and what sanction should be applied to misbehaviour without any guidance or criteria established at the national level.⁴⁶ As for the GEO no. 34/2020, the Court found that it is unconstitutional because it breaches Art. 115 para. (6) of the Constitution, which stipulates that the government may not restrict rights and freedoms through emergency ordinances: 'through its normative content it aimed at restricting the exercise of fundamental rights and freedoms (property rights, the right to work and social protection, the right to information, economic freedom).'⁴⁷

As a result of the Court's decision, the legal basis for fines applied during the state of emergency was invalidated, and thus all fines applied could be annulled in court. However, unaware of the decision, many people proceeded to pay the fines and there were reports that, even after the Court's decision, fiscal authorities issued enforcement notifications for the fines to be paid. This demonstrated once again the lack of capacity in the government and public administration to implement good public policies and protect the interest of citizens in time of crisis. Although the Senate initiated and passed a draft law seeking to annul the sanctions and reimburse those who had already paid them,⁴⁸ it was never passed by Parliament, contributing to legal uncertainty.

In addition, the police – one of the two institutions given extensive powers to apply sanctions during the state of emergency – could not provide data on the number of fines applied, the value of those fines, or where they were most frequently applied (urban or rural areas). The Romanian think tank Expert Forum made several requests under the freedom of information act⁴⁹ to each of the 42 Police County Inspectorates asking them to provide such information. The county inspectorates could only provide partial data - total sums of sanctions and total number of sanctions (fines and warnings) - because the statistical tools used by the police did not allow for such categorisation. In other words, at the end of the state of emergency, during which law enforcement had been granted extended sanctioning powers under a legal framework which was declared unconstitutional, the responsible institutions had failed to collect data which would have allowed a full analysis. The lack of data confirmed that data-based public policies are still a distant goal, further undermining governmental accountability and public trust in the government. Hopefully, the experience of the pandemic will serve as a lesson for public authorities in handling the next crisis.

4. Conclusion

The past decades have been marked by many rule of law crises in Romania, while at the same time, some significant reforms have been possible due to support and pressure from external partners, especially in the context of Romania's accession to the EU. Stakeholders at the national level have also played an important role in defending the rule of law: citizens protesting in the streets, CSOs monitoring reforms and demanding increased transpa-

rency in decision making, accountability, and respect for EU and international standards, or judges and prosecutors speaking out against damaging legislative changes and practices inside the system. Recent crises, however, have indeed posed a stress test for the resilience of all these factors, leaving them fatigued and strained ahead of 2024, a year full of elections in Romania, as well as in many EU countries. It remains to be seen whether Romania has internalised the principles of democracy and the rule of law, and has the strength to continue to uphold them in the challenging times which lie ahead.

Sources

- ¹ Romanian Constitution, https://www.cdep.ro/pls/dic/site2015.page?den=act2_1&par1=1#t1c0s0sba1 (last checked: 05.02.2024).
- ² World Justice Rule of Law Index, 2023, <https://worldjusticeproject.org/rule-of-law-index/global/2023/Romania/historical> (last checked: 09.02.2024).
- ³ World Justice Rule of Law Index, Historical data, <https://worldjusticeproject.org/rule-of-law-index/global/2023/Romania/historical> (last checked: 14.02.2024)
- ⁴ COMMISSION DECISION of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime (Decision 2006/929/EC), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006D0929> (last checked: 09.02.2024).
- ⁵ Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018DC0851> (last checked: 09.02.2024).
- ⁶ Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0664> (last checked: 09.02.2024).
- ⁷ According to Art. 133 of the Constitution (https://www.cdep.ro/pls/dic/site2015.page?den=act2_1&par1=3#t3c6s3sba133) (last checked: 14.02.2024).
- ⁸ For more information about results of the DNA: Summary of the activity of the DNA between 2005-2012, http://www.pna.ro/bilant_activitate.xhtml?id=23 (last checked: 09.02.2024); DNA Annual report 2012, http://www.pna.ro/bilant_activitate.xhtml?id=25#_Toc349050698 (last checked: 09.02.2024).
- ⁹ One of the most visible convictions was that of former prime minister, Adrian Năstase, in June 2012, to two years' imprisonment in the 'Quality Trophy' case. Năstase was accused of using the influence or authority of the position of president of a party in order to obtain for himself or for another person money, goods or benefits, <https://www.mediafax.ro/social/adrian-nastase-condamnat-definitiv-la-doi-ani-de-inchisoare-cu-executare-in-tro-feul-calitatii-politia-si-ambulanta-au-venit-acasa-la-fostul-premier-9765784> (last checked: 05.02.2024).
- ¹⁰ Hotnews, Romania, December 2014, <https://www.hotnews.ro/stiri-esential-18805383-sondaj-inscop-increderea-romanilor-dna-inregistrar-crestere-spectaculoasa-ocupa-locul-topul-increderei-institutiile-internationale-urmata-nato-biserica-isi-continua-scaderea.htm> (last checked: 05.02.2024).
- ¹¹ Digi24, Romania, February 2017 (<https://www.digi24.ro/stiri/actualitate/justitie/legea-gratierii/cel-mai-mare-protest-fata-de-oug-13-anuntat-pen-tru-duminica-in-capitala-663703>) (last checked: 14.02.2024)
- ¹² Agerpres, Romania, <https://www.agerpres.ro/justitie/2018/09/16/protest-al-magistratilor-in-fata-curtii-de-apel-bucuresti-176844> (last checked: 09.02.2024).
- ¹³ European Commission, SWD(2018) 551 final, p. 3, https://ec.europa.eu/info/sites/info/files/progress-report-romania-2018-com-2018-com-2018-851_en.pdf (last checked: 05.02.2024).
- ¹⁴ European Commission for Democracy through Law (Venice Commission), CDL-AD(2018)017-e, Romania – Opinion on amendments to Law no. 303/2004 on the statute of judges and prosecutors, Law no. 304/2004 on judicial organization, and Law no. 317/2004 on the superior council for magistracy (Adopted by the Venice Commission at its 116th Plenary Session, Venice, 19-20 October 2018), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)017-e). (last checked: 05.02.2024).
- ¹⁵ Council of Europe, Group of States Against Corruption (GRECO), Follow-up Report to the Ad hoc Report on ROMANIA (Rule 34), Adopted by GRECO at its 83rd Plenary Meeting, Strasbourg, 17-21 June 2019, p. 7, <https://rm.coe.int/follow-up-report-to-the-ad-hoc-report-on-romania-rule-34-adopted-by-gr/1680965687> (last checked: 05.02.2024).
- ¹⁶ Council of Europe, Venice Commission, Romania – Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 amending the Laws of Justice, adopted by the Venice Commission at its 119th Plenary Session (Venice, 21-22 June 2019), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)014-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)014-e) (last checked: 05.02.2024).
- ¹⁷ Two questions were listed on the ballot: - Do you agree to prohibiting amnesties and pardons for corruption offences? - Do you agree to prohibiting the government from adopting emergency ordinances in the field of offences, punishments and judicial organisation and giving other constitutional authorities the right to submit the ordinances to the Constitutional Court for further review?
- ¹⁸ Libertatea, Romania, May 2019, <https://www.libertatea.ro/stiri/rezultate-particiale-referendumul-pe-justitie-bec-80-dintre-romanii-care-au-votat-auspus-da-la-intrebarile-presedintelui-klaus-ihannis-2646776> (last checked: 05.02.2024).
- ¹⁹ Hotnews, Romania, <https://www.hotnews.ro/stiri-esential-25004857-sectia-speciala-aproape-1-300-dosare-acest-singur-rechizitoriu-bilant-6-465-dosare-5-rechizitorii-cei-3-ani-existenta-cat-cheltuit-siij-salariile-procurorilor.htm> (last checked: 09.02.2024).
- ²⁰ Hotnews, Romania, <https://www.hotnews.ro/stiri-esential-26292093-1-500-magistrati-putea-pensiona-daca-creste-intempestiv-varsta-pensionare-spune-csm-solutie-sustine-consiliul-superior-magistraturii.htm> (last checked: 09.02.2024).

- ²¹ Europa Liberă, Romania, <https://romania.europalibera.org/a/incepe-dosarul-revolutiei/32653519.html> (last checked: 09.02.2024).
- ²² Libertatea, Romania, <https://www.libertatea.ro/stiri/jurnalista-emilia-sercan-dupa-ce-parchetul-a-clasat-dosarul-de-kompromat-parchetul-mi-a-calcat-in-picioare-demnitatea-de-om-si-de-femeie-decizia-fiind-de-neacceptat-pentru-mine-4744676> (last checked: 09.02.2024).
- ²³ Diana Onicioiu, Dela0, Romania, 'Crooked justice: 3 out of 4 cases of sexual acts with child victims are prosecuted in Romanian courts as consensual acts,' <https://beta.dela0.ro/acte-sexuale-victime-copii-judecate-fapte-consimtite/> (last checked: 09.02.2024).
- ²⁴ Europa Libera, Romania, <https://romania.europalibera.org/a/dosare-prescrise-romania/32471938.html> (last checked: 09.02.2024).
- ²⁵ Eurobarometer, 2023, Perceived independence of the national justice systems in the EU among the general public, <https://romania.europalibera.org/a/dosare-prescrise-romania/32471938.html> (last checked: 09.02.2024).
- ²⁶ Europa Libera, Romania, February 2022, <https://romania.europalibera.org/a/granita-ucraina-ajutoare-/31724948.html> (last checked: 09.02.2024).
- ²⁷ Federation of Non-Governmental Organizations for Children in Romania, 'How has the crisis in Ukraine influenced NGOs in Romania?', November 2023, <https://helptohelpukraine.ro/2023/11/08/raport-cum-a-influentat-criza-din-ucraina-ong-urile-din-romania/> (last checked: 09.02.2024).
- ²⁸ Open letter to supporters of the legislative proposal to amend and supplement Government Ordinance No 26/2000 on associations and foundations, November 2022, <https://www.stareademocratiei.ro/2022/11/29/scrisoare-deschisa-catre-sustinatorii-propunerii-legislative-pentru-modificarea-si-completarea-ordonantei-guvernului-nr-26-2000-cu-privire-la-asociatii-si-fundatii-b-758-2022/> (last checked: 09.02.2024).
- ²⁹ Hotnews, Romania, November 2022, https://www.hotnews.ro/stiri-administratie_locala-25921934-parlamentul-aprobat-proiect-lege-prin-care-ong-urile-doar-perioada-foarte-scurta-care-pot-ataca-instanta-autorizatiile-construire-documentatiile-urbanism.htm, (last checked: 09.02.2024).
- ³⁰ Strategic lawsuits against public participation (SLAPPs) ([https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2022\)733668](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)733668)) (last checked: 14.02.2024).
- ³¹ <https://www.statista.com/statistics/1373346/eu-gdp-member-states-2022/> (last checked: 09.02.2024).
- ³² S.Ioniță, 'The decade of fury and indignation. How have the last ten years changed us?', 2021, Humanitas.
- ³³ European Policies Initiative, Catch-up Index (<http://www.thecatchupindex.eu/TheCatchUpIndex/>) (last checked: 14.02.2024)
- ³⁴ European Policies Initiative, Catch-Up Index 2019, 'Running on Fumes: Findings of the European,' <http://www.thecatchupindex.eu/TheCatchUpIndex/> (last checked: 09.02.2024).
- ³⁵ European Policies Initiative, Catch-Up Index 2021, 'Where Are They Now? Findings of the European,' <http://www.thecatchupindex.eu/TheCatchUpIndex/> (last checked: 09.02.2024).
- ³⁶ World Bank, <https://www.worldbank.org/ro/country/romania/overview> (last checked: 09.02.2024).
- ³⁷ Expert Forum, 'Report and debate: Two years of Saligny,' <https://expertforum.ro/2ani-saligny/> (last checked: 09.02.2024).
- ³⁸ World Bank, Gini Index, European Union, 2022, <https://data.worldbank.org/indicator/SI.POV.GINI?locations=EU> (last checked: 09.02.2024).
- ³⁹ Eurostat, People at risk of poverty or social exclusion in 2022, <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20230614-1> (last checked: 09.02.2024).
- ⁴⁰ European Commission, Communication - 2020 Rule of law report - the rule of law situation in the European Union, https://commission.europa.eu/publications/2020-rule-law-report-communication-and-country-chapters_en (last checked: 09.02.2024).
- ⁴¹ European Commission, Communication - 2020 Rule of law report - the rule of law situation in the European Union, https://commission.europa.eu/publications/2020-rule-law-report-communication-and-country-chapters_en (last checked: 09.02.2024).
- ⁴² L. Ștefan, C. Grama, 'Rule of Law in Tough Times – A Case Study on the Romanian Sanctioning Policy During the COVID-19 Pandemic,' Transylvanian Review of Administrative Sciences, 2020, Special Issue, <https://rtsa.ro/tras/index.php/tras/article/view/649> (last checked: 09.02.2024).
- ⁴³ GEO 1/1999 on the state of siege and the state of emergency (<https://legislatie.just.ro/Public/DetaliiDocument/16739>) (last accessed: 14.02.2024)
- ⁴⁴ Digi24, Romania, <https://legislatie.just.ro/Public/DetaliiDocument/16739> (last checked: 09.02.2024).
- ⁴⁵ Constitutional Court of Romania, Decision no. 152/2020, <https://legislatie.just.ro/Public/DetaliiDocumentAfis/225555> (last checked: 09.02.2024).
- ⁴⁶ Constitutional Court of Romania, Decision no. 152/2020, <https://legislatie.just.ro/Public/DetaliiDocumentAfis/225555> (last checked: 09.02.2024).
- ⁴⁷ Constitutional Court of Romania, Press release, 6 May 2020 on Decision no. 152/2020.
- ⁴⁸ Europa Libera, Romania, June 2020, <https://romania.europalibera.org/a/senat-proiectul-de-anulare-a-amenzilor-date-%C3%AEn-starea-de-urgen%C8%9B%C4%83-aprobat/30673991.html> (last checked: 09.02.2024).
- ⁴⁹ Law no. 544/2001 on free access to information of public interest. (<https://legislatie.just.ro/Public/DetaliiDocument/31413>) (last checked: 14.02.2024).

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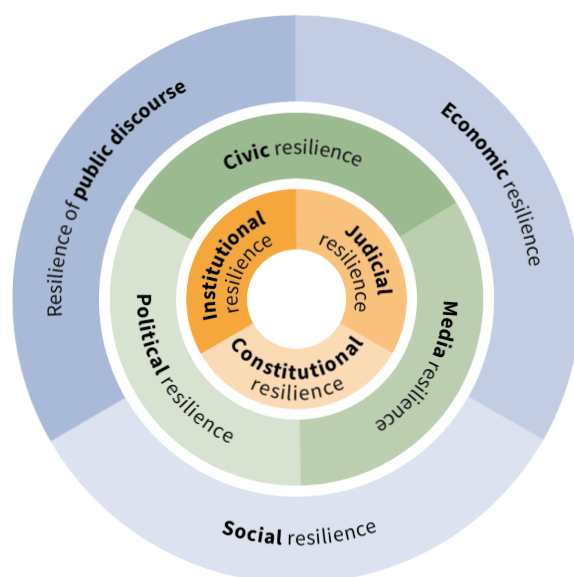
About the project

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.

RESILIENCE FACTORS



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/

