

# RESILIO

## Country Report

### Finland



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Tero Lundstedt

## RESILIO Country Report - Finland

Author: Tero Lundstedt  
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### 1. Introduction

The rule of law and democratic institutions are harder to build than to dismantle. At the beginning of a democratic transition, they are extremely fragile, but the passage of time usually makes them grow stronger. Finland can be seen as a state with rooted institutions, with the commitment to the rule of law confirmed in the first Finnish constitution of 1919, although its interpretation has been quite formal and legalistic.<sup>1</sup>

Nowadays, the state of rule of law in Finland can be seen strong, but with significant underlying weaknesses that the Finnish political establishment has so far failed to address. The reason for this neglect is mostly due to the fact that Finland has not faced any serious undemocratic challenge since the 1930s.

The 2002 report by the Finnish think tank Libera<sup>2</sup> investigated how the rule of law and democratic institutions can be dismantled or overtaken by undemocratic actors, using the examples of Belarus, Russia, Poland, and Hungary. Afterwards, we tested whether the current Finnish institutions could cope with similar challenges: the conclusion was a sobering realization that Finnish institutions could not cope with a committed undemocratic actor. The system has not yet had to cope with a seemingly impossible actor as a possible threat. The facts of parliamentary democracy and rule of law are taken for granted and no meaningful safeguards are being built. In June 2023 a new coalition government has just been sworn in,

but no major breakthroughs are to be expected. The government's programme<sup>3</sup> - while promising to promote EU rule of law monitoring mechanisms (a positive development) - says almost nothing about how to strengthen our institutions at home.

The good news is that the Finnish court system will receive additional funding. The stated goals are faster legal processes and the increased use of legal arbitration. The role of political parties in choosing jurors will be re-evaluated, as confirmed by Finland's new Justice Minister.<sup>4</sup> That being said, the concerns raised in Libera's report were not addressed. First, the foundation of the rule of law and its sustainability depend not only on what is declared in the constitution, but also require well-organised institutions with sufficient resources. The use of both legislative and budgetary power are decisive. The main weakness in the Finnish system is that the funding and independence of the courts are based on standard law, which means that they could be changed with a simple majority vote in the Finnish parliament.

The second weakness relates to the composition of courts. One recurring step in the slippery slope towards a weakened rule of law is the replacement of the state prosecutor, which ensures the control of the judiciary. A loyal state prosecutor guarantees that the power elite will always be comfortably above the law. They will not be prosecuted, even when there is valid evidence, or when the EU's anti-corruption agency OLAF calls on national prosecutors to act. In Finland, the state prosecutor is hard to re-

place, but at the same time the number of judges in our highest courts are not fixed in our Constitution, allowing an undemocratic actor to change the composition of the Supreme Court at whim. The President of the Finnish Supreme Administrative Court has voiced his concerns over this fact.<sup>5</sup>

Third, authoritarian governance models always begin by weakening and eventually dismantling the rule of law safeguards. The first target is the Constitution and Constitutional Courts, as constitutionalism is the cornerstone of the rule of law principle, ensuring that all the laws conform to the spirit and letter of the constitution. It is both noteworthy and worrying that Finland does not have an independent Constitutional Court to ensure all legislation is constitutional. Instead, Finland has a Constitutional Committee made up solely of parliamentarians, who determine ex-ante whether legislative proposals are constitutional. There is no ex post facto evaluation of the constitutionality of the laws. Even more importantly, the same Committee also determines what kind of legislative order the law requires in parliament. This means that in theory, a simple majority vote could determine that a proposed law is not unconstitutional and thus does not need a supermajority, allowing parliament to pass such a law with the same simple majority that no independent court could challenge after the fact.

A society that is not based on the strict observance of the rule of law cannot build credible safeguards for its institutions. For democratic institutions to be sustainable and functional, society's common commitment to the rule of law is key.

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

### **2.1 Most important systemic factor: institutional resilience**

Finland has a very strong institutional resilience against any rule of law infringements for two main reasons: the strength of the institutions themselves, and the public trust awarded to these institutions and their officials.

Finns have among the highest percentage of people trusting in public officials, according to the latest OECD report.<sup>6</sup> Public trust varies quite significantly between institutions, however: 66% of Finnish citizens trust the civil service, 61% trust the government in power, while the

trust in parliament and local government is down to 53% and 52% respectively. There are many reasons for the high levels of trust in Finnish society, sometimes called 'the Finnish societal superpower.' The two main factors are the low levels of corruption and consensus-driven politics.

Indeed, Finland is very often ranked the least corrupt country in the world (shared position).<sup>7</sup> However, there are several forms of corruption and some are not as easily detectable as others. Finland fares worse in terms of structural corruption - which is harder to measure - and fares less successfully in comparison to EU average when it comes to perceived corruption.<sup>8</sup> In the 2022 Eurobarometer survey, 41% of Finnish respondents said that the abuse of power is common among Finnish politicians (EU average 55%), and 61% of Finnish respondents agreed on the statement 'Too-close links between business and politics in Finland lead to corruption' (EU average 77%).<sup>9</sup> While the numbers are under the EU average, these common experiences indicate that Finland is not so free of corruption after all.

Notwithstanding these reservations on the Finnish concurrent top positions in the corruption rankings, they do attest to the strength of Finland's rule of law. When the institutions themselves have been built up in a transparent and constitutional manner and are run by (mainly) trusted public officials, this gives true meaning to the principles of legality, equality, impartiality of the courts, and respect for fundamental rights.

Under these circumstances, Finnish rule of law institutions can face hazardous events and threats without losing their functionality and purpose. Moreover, the safeguards should enable the system to successfully defend itself against challenges, with the one core exception of the lack of Constitutional Court, which is a possible threat to the impartiality of the judicial system.

In sum, Finland has robust and trusted institutions that enjoy systemic resilience. It is hard to imagine how an actor could find cracks in the system, apart from the nightmare scenario of an undemocratic actor achieving a major electoral victory, in which case the Finnish system could prove to be very weak indeed.

Nevertheless, the fact remains that the configuration and funding of the Finnish courts can be changed quickly and by a simple majority. The protocol for the appointment of judges is vague and the Constitution does not fix the num-

ber of the judges, even in the highest courts. Finally, any changes would be found unconstitutional by the same parliament, not by an independent judiciary. For this reason, Libera has suggested that we acknowledge the potential weaknesses of our system, before we face any undemocratic challenges. Under the present conditions it is hard to build up a parliamentary majority to tackle this seemingly theoretical question.

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

The second strength of Finnish rule of law is the long tradition of consensus politics. Lacking one or two dominant political parties, Finland has a more fragmented political scene. As a result, almost all parties need to be able to work with almost all of the others – and indeed have done so in the past. These grand coalitions will take most of the voters' opinions into account, yet often fail to make the necessary changes for the same reason.

Due to consensus politics, even if an undemocratic political party were the Finnish Parliament, it would face an uphill struggle to try to change the current political status quo. A more likely scenario is that all the other parties would join forces in a wide coalition against any anti-democratic tendencies.

However, one should be ready to fix potential weaknesses when times are good and not wait for a Finnish Orbán to enter the scene. Indeed, the task of strengthening the safeguards of our democracy and rule of law will become increasingly difficult if a committed anti-system actor starts to gain influence.

Other aspects of Finnish political resilience include cultural factors and attitudes towards democracy.

Finland can be seen as a very equal society, with a comparably minor distance between the power elites and society at large. Anybody can become a candidate in Finnish elections and successful campaigns usually require far fewer funds than in other countries. Parliamentarians do not come from costly elite private schools but from all over Finland and from all kinds of backgrounds. The only possible elitism one can detect is that with the exception of the populists, parliamentarians usually learn to communicate using unnecessarily obscure language full of political jargon.

Finns have a high trust in democracy. At the same time however, many feel that they cannot influence political processes and voter turnout has been steadily decreasing. In the 2020s, voter turnout was the lowest in the Nordics by a wide margin. While voter turnout is still high compared to the rest of the EU, the decrease has worried many commentators. Libera touched upon the topic in our 2022 research report on Finnish democracy.<sup>10</sup>

While Finns trust democracy and have good access to information as well as the capacity to become candidates themselves, they feel they cannot make a difference. This might be the flip side of the consensus politics, whereby the many veto rights in grand coalition governments render major changes seemingly impossible. This works as a significant protection from undemocratic actors, but can also contribute to the voters' perception that nothing changes, whoever they vote for. This feeling is often compounded by the fact that parties that lost the election can often be found in government. This strange phenomenon is due to the fact that Finland does not have political blocs. After the populist Finns Party (formerly True Finns) won 19.1% of the parliamentary vote in 2011, many parties refused to participate with it in government, which in turn significantly limits the possibilities for coalition governments.

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

The most important contextual factor for Finland is our possible weakening resilience against outside interference due to the polarization of public discourse, which has increased since the Finns Party became a major political force. This broke the old Finnish model in which two of the three big parties would take turns to form centre-left or centre-right governments. The Finns have been taking more and more of the vote from the old centre-right party, making the new big three more right-wing leaning while simultaneously uniting many left and centre-left parties against the new common enemy.

As building governmental coalitions became harder, the political pendulum has swung in a manner previously unseen. In 2015-2019 Finland had a particularly right-wing government, and in 2019-2023 the most left-wing government in at least 40 years, while since the summer of 2023 we have had probably the most right-wing government since the Second World War.

The Finns Party is now part of the latest grand coalition government. Time will tell whether they can moderate their communication and maintain their support while in power, which would make them a more “normal” party in the Finnish setting and thus open up more possibilities for coalitions in the future. The alternative is to adopt a bloc system such as in Sweden, but this would entail some problems as the left-right or liberal-conservative divisions are not all that clear in Finland.

Polarization is seen everywhere, including in the parliament itself where there have been reports of a ‘toxic’ atmosphere and debates.<sup>11</sup> In September 2023, the opposition tried but failed to bring down the government with a vote of no-confidence.<sup>12</sup> The government and its individual ministers have faced accusations of racism and even fascism. Given that the government’s program is not racist, let alone fascist, this is a clear sign of changes for the worse in Finnish general political discourse. As Finns are becoming more and more divided, our capabilities for resilience against any outside interference is weakening.

The elephant in the room is Russia, known for its attempts to influence and manipulate Finnish political discourses even when the relationship between our two countries was in much better shape. After the its annexation of Crimea in 2014, Russia tried to use its notorious ‘bot army’ to flood Finnish digital platforms with pro-Kremlin messaging. In the last few years, it has managed to improve the Finnish language skills of its bots significantly. Fortunately, after Russia’s full-scale invasion of Ukraine in February 2022, the Finnish consensus has shifted almost completely against Russia. Any pro-Russian messaging is seen as toxic by a supermajority of the Finns and thus Kremlin propaganda has been unable to find any significant outlets. The fact that the bots now have improved Finnish language skills does not help if the general population is simply unwilling to listen to the message. Since joining NATO in the spring of 2023, Finland has become an enemy country in the eyes of Moscow, which has initiated a major smear campaign against Finland within Kremlin-controlled media. It is safe to assume that despite its difficulties to get its messages across, Moscow has not given up on its project to help to draw more dividing lines in Finnish society. However, this might change if political polarization continues in Finland and if Russia is able to freeze the conflict in Ukraine or somehow achieve a lasting ceasefire. In a scenario where Russia becomes somewhat less of a pariah state and Finland continues to divide itself into warring political camps, targeted messaging demonising

one of the camps could be more effective. This has the potential to be a major weakness for Finland in the future.

### **3. Impact of crises on the rule of law: the Covid-19 pandemic**

Every EU member state introduced some kinds of restrictions during the worst of the COVID-19 pandemic, the length and severity of which depended on the country’s level of infections, legal culture, and government. Finland was less affected than many others, mostly due to the fact that we had far fewer infections, less pressure on our medical capacities, and subsequently fewer deaths than most European states, although Finland did have the highest per capita death toll of the Nordics.<sup>13</sup>

There were two distinct and notable periods of restrictions in Finland, at the very beginning of the pandemic (March 2020) and a year later (March 2021). The two experiences were very different.

On 16 March 2020, the Finnish government and President declared a state of emergency which brought about several restrictions on fundamental freedoms. Under Finnish legislation, such acts had to be effective, necessary, precise, implemented at the right time after other measures had already proved insufficient, proportionate in relation to the threat, and also had to guard citizens’ basic rights. The various restrictions included shutting down schools, banning almost all movement between the capital county of Uusimaa - where more than 30% of the Finnish population lives - and the rest of the country, and forcing medical professionals to work.

The state of emergency was declared over on 15 June 2020, but was again proclaimed in March 2021 due to another high rise in the COVID infections. This time the government introduced a bill for a full curfew in some areas of Finland, including in Helsinki and Turku. The proposed curfew would have banned all movement that was not expressly allowed. It would have been among the harder curfews introduced in Europe and yet, notably, Finland did not have a comparable number of cases, nor were our medical facilities under severe strain. One could easily question whether the proposed measures fulfilled the aforementioned strict criteria of effectiveness, proportionality, or guarding the basic rights of citizens. The restrictions seemed to be more of a just-in-case nature, pre-emptively combatting a possible worst-case scenario of the uncon-

trolled spread of the virus.

As mentioned in part 1, Finland lacks a Constitutional Court and the constitutionality of the proposed COVID restrictions only had to pass the Constitutional Committee. Fortunately, they did not. The Constitutional Committee found the proposed restrictions in many ways unconstitutional,<sup>14</sup> unable to pass the test of proportionality or the requirement of absolutely necessity. In particular, the Committee pointed out that banning all movement unless expressly allowed was troubling. After such criticism, the government withdrew the bill, and the proposed restrictions were never passed. In other words, the constitutional safeguards did work as intended and eventually the COVID infections decreased with less severe measures.

Nevertheless, although the curfew example had a happy ending, this was only due to the last gatekeeper under the Finnish system. Society seemed passive and willing to have fundamental rights breached 'for the common good,' while questions over proportionality were not widely asked. One reason for this was probably the polarization of the topic in Finland: a very small minority of anti-vaxxers were firmly against any kind of measures and spread all sorts of conspiracy theories. The great majority did not want to be associated with this fringe movement, so they accepted all the restrictions without much opposition. However, there is a risk that breaching fundamental freedoms 'just in case' will lead to becoming a precedent for the future. While it can be argued that COVID pandemic was unique, it would be naively ahistorical to assume such a thing could not happen again in the future. On the contrary, a more politically polarised Finland and its rule of law institutions might be even less ready to stand up to a challenge against citizens' fundamental rights in a comparable situation.

#### **4. Conclusion**

Finland has a long history of strong democracy and, in many ways, durable and resilient rule of law institutions. That being said, its democratic model and safeguarding institutions have not faced any severe tests. In the case study of pandemic-related restrictions, the proposed law would have been unconstitutional, but the system worked as the Constitutional Committee rejected the law.

Finnish resilience is strengthened by systemic and subsidiary factors. The systemic factors are based on the strength of the institutions themselves in terms of legislation and resources available to them, and the public trust awarded to these institutions and their officials. The flip side is the underlying naivety of the Finnish system, where a simple majority could, in theory, tear down constitutional safeguards in a short period of time. The subsidiary factor that underpins Finnish rule of law resilience and makes the undemocratic majority unlikely is the long tradition of consensus politics. This makes major policy changes on the rule of law and its safeguards both unlikely to be proposed and almost impossible to be passed with a parliamentary majority.

Finally, and unfortunately, Finnish resilience is jeopardised by one contextual factor: the growing polarization of Finnish public discourse - shown for example by several public polls - has the potential to weaken our resilience against outside interference. Unlike the systemic factor, the contextual factor is a difficult thing for any society to fix.

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## About the author

**Tero Lundstedt** is Content Manager of the Think Tank Libera Foundation. He holds a LL.D in international law from the University of Helsinki Law Faculty.

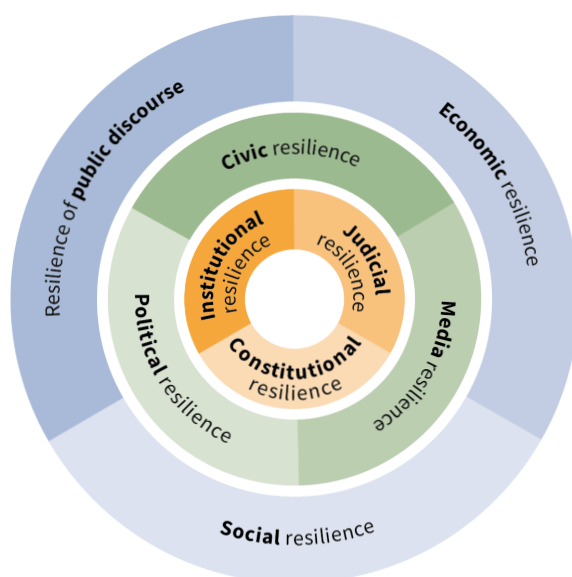
## About the project

**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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