

RESILIO

Country Report

Estonia



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1. Introduction

Compared to other Central and Eastern European (CEE) countries, Estonia stands out as a rather successful parliamentary democracy with a robust and simple rule of law system.¹ However, this does not preclude the existence of several problems and dangers also present in other CEE states. Estonia's history and geographical location have not made it easy to build and maintain a nation state with a consolidated democracy and functional rule of law. Although ancient Estonia might have had some proto-democratic roots, after 800 years of mixed experiences under the Danish Kingdom, the Teutonic Order, the Swedish Kingdom, the Polish-Lithuanian Kingdom, and the Russian Empire, Estonia's quest for democracy and rule of law started in earnest just over a century ago, in 1918, and lasted only 15 years. What made this quest possible was Estonia's belonging to the cultural space of Protestant Christianity that valued individual autonomy and equality before the law.

After WWI, when Estonia gained independence from the violent and autocratic Russian empire, the country had democratic ideals but almost no experience of how to create a democratic nation state with a proper division of powers and rule of law. Having achieved independence largely due to Estonians gradually taking over municipalities and local governments from the late 19th century, social and legal resilience was low given the imperial past and a lack of democratic experience. Estonian political culture was

further marked by strong political competition, stemming from authoritarian rule with limited liberties, and a strong military.

In the first period of independence during the interwar period, the ideals of democracy and rule of law dominated the Estonian political system from 1918 to 1934. However, this was followed by a coup in 1934 by President Päts, who then established a system of authoritarian rule with de facto limited liberties and minimised constitutional protection, which lasted until 1940. While the Constitution and laws formally remained mostly the same, in practice these were interpreted according to the needs of the ruling duo of President Päts and General Laidoner.² Elections and certain civil liberties were suspended for security reasons, but as Päts's coup was orchestrated to prevent a fascist-leaning party from taking power, citizens largely accepted his rule without wider resistance. While political democracy faded, an injured but still rudimentary rule of law edifice remained. Yet the hopes of more stable rule and a stronger army were defeated when Päts's corrupt regime deterred Estonian society from defending its independence against the Soviet invasion of 1940.

Under Soviet occupation, the previous semi-constitutional authoritarian order was transformed into full Stalinist totalitarianism with pseudo-constitutionalism and a total lack of rule of law.³ Mass killings and deportations to Siberia, together with confiscation of all personal property without any legal protection symbolised that era of terror.

In the post-Stalin period, although a constitution and legal order also existed in the Soviet Union, Western-style legal protection and a proper rule of law was still absent for most social groups in Soviet Estonia. In later Soviet periods, legal protection and social trust in a sort of constitutionalism gradually improved, but the rule of law and division of powers was never strived for or achieved.⁴

The Soviet heritage of pseudo-constitutionalism and rule of law as a formality was the de facto starting point for Estonian society when the country regained its independence in 1991. Despite the high aspirations to bring back pre-1934 democracy, the practical experience of rule of law and how to build it were low, and mostly only available for elite social groups, because they had studied and worked abroad. At the same time, the Protestant culture of Estonian society defined itself against Soviet rule precisely by worshipping individual autonomy and equality before the law.⁵ Thus, there was no lack of enthusiasm or willingness to learn. Estonia's main challenge was similar to that of other transitional CEE states: how to make democracy and rule of law succeed before society grows disappointed and tired from the backlash against reforms, and starts to consider non-democratic alternatives without the rule of law (as happened in many former Soviet republics). During this period when Estonia struggled with political and economic reforms, regional Nordic models and supporters – such as Finland, Sweden, and Denmark – played a crucial role in maintaining faith in the rule of law. Among the former Soviet republics, Estonia was one of the most successful on its path to reforms: its achievements in consolidating democracy and the rule of law were very similar to its Baltic neighbours. Again, this mostly reflects cultural presuppositions – either Catholic or Protestant – that enabled the rule of law edifice to emerge. Nevertheless, differences have emerged with Estonia's neighbours: for instance, Latvia has witnessed the emergence of oligarchic features compared to Estonia.⁶ Still, the main external factor impacting the actual achievement of the rule of law after re-gaining independence was the pre-accession process and accession to the European Union.⁷

As a result, considering the historical circumstances, the rule of law in Estonia currently has a relatively strong standing. The three main factors that support consolidated democracy and the rule of law are: cultural presuppositions; strong social commitment; and low levels of corruption. The main impeding factors are: the Soviet legal heritage; and a short (30-year) tradition and practice of

rule of law. Among Estonian institutions, democratic reforms proved most successful in the political arena and weakest in the court system.

In recent years however, some negative trends have appeared, mostly due to external factors, including the global financial crisis, the COVID-19 pandemic, migration pressure, growing radicalism in Europe, and systematic attempts by the Russian Federation to destabilise the political and social situation in neighbouring NATO and EU member states.⁸

2. Analysis of the country case along the RESILIO model

2.1 Most important systemic factor: constitutional resilience

Robust systemic resilience in Estonia relies on the mutually coherent working of all three pillars of the RESILIO model. Constitutional resilience in Estonia is a result of profound debates at the Constitutional Assembly in the early 1990s, and also acts as the foundation for the sound functioning of the judicial system and civil service. As for institutional resilience, the Estonian civil service has relied on a considerably strong public service ethos and its functioning has been based on unfaltering, rule-abiding conduct. Similarly, the independence of the judicial system is outstanding in Estonia, and the functioning of the judiciary is relatively smooth.⁹

Although the overall cultural proclivity towards the idea of equality before the law, individual autonomy and a law-guided system of rights and duties has considerably deep roots within national traditions, given the Soviet heritage, there is still room for improvement in public understanding of how the rule of law and the constitutional order work in an everyday context. This is most visible in citizens' relatively low expectations on the functioning of the state, and particularly on the effectiveness of public policies.¹⁰ Similarly, Estonia is regarded as a 'simple polity' in which trade unions and social partners assume only marginal roles.¹¹ Despite being a success-story in e-governance – with the widespread use of smart-ID digital identity, the electronic tax-filing system e-Tax, and I-voting – transparency of the policy process has not much improved, since participation is not the first priority for top civil servants.¹²

At the same time, the robust functioning of the rule of law is highly valued in Estonia, with hard work, precision, and punctuality seen as norms in public administration.¹³ In addition, and in contrast to other CEE states, the civil service in Estonia is known to be one of the least politicised:¹⁴ patronage is the exception rather than the rule. The Estonian civil service has been characterised by the values of legality, trustworthiness, proficiency, impartiality, a focus on people, and openness and cooperation.¹⁵ Finally, it should be stressed that Estonia is among the least corrupt CEE countries.¹⁶

The independence of Estonia's judicial system is outstanding. The Lisbon Council Rule of Law Dashboard¹⁷ evaluates the independence of Estonian judiciary as high, and higher than the EU average, with the only minor exception being the level of companies' perceived judicial independence. The functioning of the judiciary in Estonia is also close to being excellent. According to the Justice Scoreboard's comparison of EU member states, Estonia has for many years been among the leaders in the adjudication speed of cases in administrative and country courts.¹⁸ Estonia also stands out among the best in Europe in respect of IT solutions. Estonian citizens can submit electronic appeals to the court, follow the progress of a judicial proceeding, and allow courts to publicly disclose necessary information. At the same time, the Scoreboard indicates that the number of interactive solutions to provide citizens with explanations, or help people who have to turn to a court, are not sufficient. Remarkably, in Estonia, the total expenditure on courts per capita is among the lowest among EU member states, remaining around 50 Euros.¹⁹

Concerning the performance of courts, there exists a slight problem in the perceived ruling difference between the first and second level courts: most publicly debated and socially interesting court cases in recent decades have received one verdict in the first instance court, and the opposite verdict in the second level court. This has caused confusion among citizens over how to understand legal norms. Estonia does not have a strong tradition of precedent law, so earlier legal practices have some impact, but this does not mean that the ruling will be the same in the future.

Constitutional stability in Estonia has been high and debates on constitutional reforms are rare, mostly due to wider strategic choices, such as EU accession in 2004. The Estonian Constitution is short and simple. Created to safeguard national independence and survival, its main aim is to avoid semi-legal incorporation into the Russian em-

pire.²⁰ This, however, has also created obstacles for deeper integration within the EU and NATO. The latest change to the Constitution took place in 2003 after a non-binding referendum, when the national parliament enabled EU accession and power-sharing with EU institutions.

The Constitution of Estonia establishes that justice shall be administered solely by the courts, and that the courts shall be independent in their activities and shall administer justice in accordance with the Constitution and the laws.²¹ According to the spirit of the Constitution, the Estonian court system forms a uniform whole, with the exclusive competence to perform the function of administration of justice, and is separated from both the executive and legislative powers in the performance of this duty. Estonia's court system consists of three instances: county and administrative courts are the first instance courts; circuit courts are the courts of the second instance; and the Supreme Court is the third instance. The formation of emergency courts is prohibited by the Constitution. The structure of Estonia's court system is one of the simplest in Europe. The peculiarity of the system lies in the fact that the Supreme Court simultaneously performs the functions of the highest court of general jurisdiction, the supreme administrative court, and the constitutional court.²²

As the highest court in Estonia, the Supreme Court shall review court judgments by way of cassation proceedings, and is also the court of constitutional review. The Supreme Court is responsible for: a) review appeals in cassation and protests; b) hearing petitions for review filed against court judgments; c) hearing petitions for constitutional review; and d) resolving certain matters pertaining to court administration. There are 19 justices in the Supreme Court and the court is composed of the Civil Chamber, Criminal Chamber, Administrative Law Chamber, and the Constitutional Review Chamber.²³

In civil, criminal, and administrative cases an appeal in cassation, an appeal against a court ruling or a petition for the review of a court decision can be filed with the Supreme Court. The Supreme Court does not accept all filed appeals.

The Supreme Court shall accept a matter for proceedings if: a) the circuit court has evidently applied a provision of substantive law incorrectly in its judgment or has materially violated a provision of procedural law in making the judgment, which could have resulted in an incorrect judgment; b) the adjudication of the appeal in cassation has fundamental importance with respect to guaranteeing legal certainty and developing a uniform judicial practice.²⁴

No pre-trial proceedings are required when appeals are filed with the Constitutional Review Chamber.

After Estonia's EU accession in 2004, some of the functions and roles of the Supreme Court have changed. For cases related to EU law, the Supreme Court of Estonia requests and automatically passes the preliminary ruling from the EU Court of Justice. This has had an impact on the status and reputation of Estonia's Supreme Court. Unlike the Constitutional Courts in Germany or the Czech Republic, the Supreme Court of Estonia has never challenged the supremacy and direct effect of European legislation. The most challenging case for the Supreme Court of Estonia was in 2017 when it asked for legal clarification on whether the Estonian Parliament could ratify the ESM treaty.²⁵ A small majority of Court members found that there was significant breach of the Estonian Constitution, but ruled that it could be accepted given the complex circumstances, even when it did not conform to the principles of the Estonian Constitution.

EU accession consisted of a huge number of legal acts that had to be incorporated, understood, and followed, thus creating significant pressure and problems for the legislative and court systems. It took around ten years to stabilise the legal system once again.

The constitutional role of the Estonian Parliament (*Riigikogu*) needs to be outlined. It has been rather hesitant in its constitutional role of ensuring the rule of law. Constitutional debates and dilemmas are viewed as rather uncomfortable and are avoided where possible, or pushed to the Supreme Court. The parliament acts more as an everyday legislative body in the service of the governmental coalition. Thus, the parliament does not quite meet its task of balancing the other powers, especially the executive. Changing the constitution is a very complex process and demands strong political consensus. It produces, on the one hand, a very stable constitutional order, while on the other hand, it also prevents moves to adapt to contemporary political and security needs.²⁶

Due to the Soviet legacy, trust in constitutional institutions is not very high²⁷ and is additionally compromised by political obstruction from opposition parties, as well as parties' occasional efforts to smuggle their members into institutions which should be politically neutral, socially protective, or balancing, such as the Supreme Court, the Ombudsman Office, the Bank of Estonia, the Gender Equality and Equal Treatment Commissioner's Office, university rectorates, and Estonian Public Broadcasting.

For the most part, appointed individuals (in many cases even former ministers) leave their political party just before stepping into a new office by declaring that they no longer have any political preferences.

Mistrust towards institutions is even greater among the Russian-speaking section of Estonian society, which often believes that institutional discrimination takes place on the basis of nationality at all levels of public policy. This is also related to the fact that for Russophones, social stratifications are rigid, given that it has been especially difficult for them to enter the civil service and politics.²⁸

2.2. Most important subsidiary factor: civic resilience

Civic resilience has been most important among subsidiary factors together with political resilience. The main challenges have appeared after Russian full-scale invasion of Ukraine in 2022, which has amplified the disintegration of Estonian society and functional parliamentary democracy. From one hand there are growing confrontations between Russian speaking pro-Kremlin and Estonian speaking pro-Western parts of society. From the other hand, these social tensions have also been projected to national parliament, where since the latest elections in March 2023, since when parliamentary processes have been almost halted by obstruction and parliamentary debate has been confined to the standing committees.

Conflict among coalition and opposition and obstruction in the parliamentary process has gone so far that in 2024 legal acts in Estonian Parliament are only being passed with the help of the government vote of no-confidence (as it simplifies and shortens the legislative procedure) instead of debating and voting every single proposal separately. But this essentially means that parliamentary debates have been cut close to zero. Nevertheless, until March 2023, the basic functioning of the Estonian party system was relatively robust and pluralist for a democracy. As for media resilience, Estonia stands out as one of the countries with the highest media freedom in Europe and, in comparison to other post-Soviet nation, it can be proud of its pluralist media landscape. Estonia scores higher than the EU average in terms of regulatory authorities and journalists' protection, and is only slightly less strong in transparency of media ownership.²⁹

In Estonian civic space, there is no tradition of deep consensus. In many respects, there is a thick red dividing line between the Estonian-speaking part and the Rus-

sian-speaking part of society. Moreover, among Estonian-speakers, a divide still exists between well-off big city dwellers and the inhabitants of small towns and rural areas, which often display elements of Soviet nostalgia. Overall, Estonians have only in limited cases stood up for their Constitutional rights and privileges. The recent COVID-19 crisis and Russia's hostile policy towards its Baltic neighbours has only made the situation more complicated. In 2023-2024, large flows of Ukrainian refugees (up to 80,000) constituted nearly 5% of the Estonian population. While most Ukrainian refugees are anti-Kremlin, they use Russian in everyday communication and are integrating slowly into Estonian society. Accordingly, local Estonian citizens are sometimes confused about what to expect from them, while local Russian-speakers and radical nationalists are hostile to Ukrainian refugees.³⁰

Additionally, Estonian political resilience has been harmed by political parties' social polarisation, which in earlier years was driven by the Centre Party, and based on nationality. More recently, the leading role has been taken by the Estonian National Conservative Party (EKRE), which stokes division based on ethnicity as well as socio-economic deprivation. The EKRE also plays the 'conservative' values card.³¹ In 2023-2024, many other parties openly declared that they would not cooperate with either the Centre Party or the EKRE.

It should be noted that polarisation is not only, or even mostly the cause of problems, but is itself an expression of low trust in the functioning of democracy and rule of law. Here, the most telling sign are the EKRE's values that prioritise majority decisions over the fundamental rights of minorities. The main opponent to the rule of law and constitutional order is the EKRE, which uses all possible ways and means to make rhetorical attacks and to distract constitutional institutions – including the Prosecutor's Office, Ombudsman, and free press – from fulfilling their regular tasks.

Anti-democratic and non-constitutional movements are drawing both inspiration and support from developments in the Russian Federation, Hungary, and Poland.³² Estonian civic resilience is already being actively tested and attacked by the Russian Federation.³³

In this challenging situation, unfortunately, Estonia will need to improve its civic resilience before a local version of Orbán emerges: the national-radical EKRE is an Estonian father-and-son party (led by Mr. Mart and Mr. Martin Helme), which has already been part of a governmental

coalition between 29th of April 2019 and 26th of January 2021. However, the apparently democratic inclusion of a protest party in government resulted in growing distrust, especially after February 2022, and ultimately ruined the pro-Kremlin Centre Party's reputation. Support for EKRE in the last election was around 27%. Recent surveys show that despite the slight drop after elections, support for them is growing again.³⁴

Overall, the current scoreboards of democracy and rule of law award Estonia strong results, on the same level with Greece, the US, and Italy.³⁵ However, according to Barrington Moore's theoretical models³⁶ and empirical studies by Samuel Huntington,³⁷ Estonia is historically a non-consolidated democracy and has not evolved to the final level of rule of law. This means that there are also strong social groups that support an authoritarian and corrupted state model, and even visible trends to push for its realisation. Accordingly, it is possible that anti-democratic forces may gain power through democratic elections, and start pushing for non-democratic and anti-constitutional processes. Even in 2024, democracy and rule of law are not seen as 'the only game in town'.³⁸ Tradition and the educational system can be seen as the main variables able to support the further consolidation of democracy, constitutionalism, and the rule of law.

2.3. Most important contextual factor: polarisation of public discourse

The Estonian populist political party EKRE is committed to destroying public trust and support for the rule of law and legal resilience. It aims to develop a semi-authoritarian pro-Russian regime like that in Hungary and (until recently) also in Poland. In the latest parliamentary elections, EKRE won the second highest level of support (16% of votes). Their aims, goals, pattern of actions, and methods have been very similar to Orbán's Fidesz and PiS in Poland. Furthermore, they have also had close contacts with Russian sponsors, among whom the Wagner Group was one of the most visible.

Over the last five years, EKRE has been the main political actor constantly testing how constitutional institutions can withstand attacks from a committed hostile actor inside the system. They have been trying to use the democratic system to gain political control and, having failed in this, are now trying to discredit the system in the eyes of sceptical social groups.

Russian informational warfare consisting of systematic disinformation campaigns, cyber-attacks, mobilisation of Russian speakers in Estonia and planting Russian hostile narratives into Estonian media and the rise of EKRE as one of the most popular parties are the two factors that have weakened public resilience and polarised public discourse,³⁹ exploiting existing linguistic as well as ideological cleavages. As a result, political obstructionism and the lack of cooperation have reached new levels, where polarised groups no longer try to achieve their aims, but rather demonise their opponents in the eyes of the voters. Currently, both parliamentary and mainstream media debates can be described as toxic, taking the form of separate monologues that do not constitute a proper dialogue. For the Russian Federation, the polarisation of political discourse in its neighbouring countries (including Estonia) seems to be one of the central foci. Among the 400,000 thousand local Russian-speakers, there is presumably also a high number of influence agents attempting to polarise both political and social discourses.

Social media has intensified this problem even further. Most probably, Russian attacks will increase rather than decrease.⁴⁰

The contextual factors in Estonia, in addition to the already weakened subsidiary factors, form the weakest dimension compared to the systemic ones.

Regarding economic resilience, on the one hand, Estonia has been truly successful in its pursuit of the EU average GDP per capita. At the same time, inequalities within society are remarkable, with Estonia ranking among the EU member states with the highest rates of economic inequalities.⁴¹ This is amplified by the peculiarity of Estonia's welfare state. While the health care and education systems are relatively inclusive and accessible to all, Estonia's social care systems are notoriously minimalistic. Social resilience shows similar controversies. While the sense of community is strong within language groups, a clear divide exists between the bulk of Russophone- and Estonian-language groups. Diversity has a similarly ambivalent status. Roughly half of Estonia's population follows liberal values that protect minorities. The other half holds a much more traditionalist posture. With the support of a relatively strong media, public discourse has been the most resilient aspect of all contextual factors. However, deep divides in the social and economic spheres have also started to impact that factor.

3. Impact of crises on the rule of law: the Euro-crisis, the Covid-19 pandemic and the Russian war against Ukraine.

While the EU was a committed and effective partner in building strong political and legal institutions in the first decade of Estonian membership, in recent decades, the experience has been mixed. The biggest blow most likely came from the EU's solution to the Euro-crisis, which has left a strong and lasting impact on the socio-economic resilience of European nations, including Estonia. The divisions have brought persistent, if not growing resentment among groups that feel left behind (e.g. the *Gilets Jaunes* in France) and strongly increased the share of votes by (mostly right-wing) populists. It also undermined the success of the CEE countries in catching up with the old EU member states. The solutions to the later migration and COVID-19 crises also witnessed a situation in which EU policies or principles were occasionally used to attack or discredit national political institutions, the level of democracy, and rule of law.⁴²

The Covid-19 years had a significant impact on social resilience and the rule of law in Estonia. Early on in the pandemic, Estonian society expected more effective legislation in terms of border and health control to avoid the initial spread of Covid-19. However, the government did not act as pre-emptively as expected. In contrast, when infections later spread, the government was seen as over-reacting and enacting non-constitutional restrictions. The government also rejected the public demand for debate before enforcing the rules.

A major part of public disappointment was that the government did not stop infected people from entering Estonia and spreading the virus freely without restrictions. In a later stage, constitutional rights were restricted for non-infected people, and the cost was also pushed onto citizens and the state budget.

The government used both soft violence in terms of forcing people to resign from Estonian Defence Forces if not vaccinated properly and direct violence in terms of several people experiencing arrests and police violence during peaceful protests against governmental Covid-19 measures in 2022 against those who rejected its vision of vaccination or isolation. Regarding restrictions, the government lacked strong scientific argumentation, legal bases, and dialogue with society.

In recent years, Russia's hostile informational warfare campaigns have also targeted legal resilience and the rule of law in Estonia.⁴³ This campaign has represented a significant effort from the Russian side, and enjoyed some success among three of the most vulnerable social groups: local Russian-speakers with a lower socio-economic status, older people nostalgic towards the Soviet times, and Euro-sceptics. Together, these three groups form more than 30% of the Estonian population. Central elements of the Russian propaganda campaign are that Estonian national institutions are incapable, and that both the EU and NATO are abusing Estonia, forcing it to adopt illegal legislation, from migration rules or NATO bases, to EU banking regulations.

4. Conclusion

The wellbeing of Estonian democracy and rule of law combines different historical and cultural aspects, some positive and some negative, and which impact on the current resilience level.

Firstly, Estonian civic culture, in addition to its inner leaning towards an individuality-based culture, has the biggest positive impact. This dates from the nobility, descended from German-Teutonic rulers, who in the 18th and 19th centuries brought Protestant ethics, a low level of corruption, and German legal traditions. This was also enforced by later Swedish and Polish-Lithuanian rulers. Secondly, Russian and especially the Soviet occupation introduced the formality of institutions and mimicry of the rule of law. Furthermore, Russian-speakers were introduced into Estonia, who had different values and a relatively low understanding of the European traditions of democracy and the rule of law, which modern Estonia's integration process has also partially failed to mend. Thirdly, a huge migration wave from Ukraine has brought a new Russian-speaking population into society, from a country with very high levels of corruption.

Estonian society in 2024 is very diverse in terms of Estonian speakers and Russian speakers or the capital and rural population. As a result the average levels of corruption, appreciation of the rule of law, and civic resilience say very little as these only represent an arithmetical average of a rather polarised society.

However, Estonia has been independent for 32 years, and this has helped shape a new civic culture, social expecta-

tions, and tradition of the rule of law. While Estonia may compare favourably with many other post-communist CEE states, the past decade as well as upcoming years will no doubt be full of Russian attempts to destabilise and fragment Estonian society as well as to destroy belief in democratic institutions and constitutionalism.

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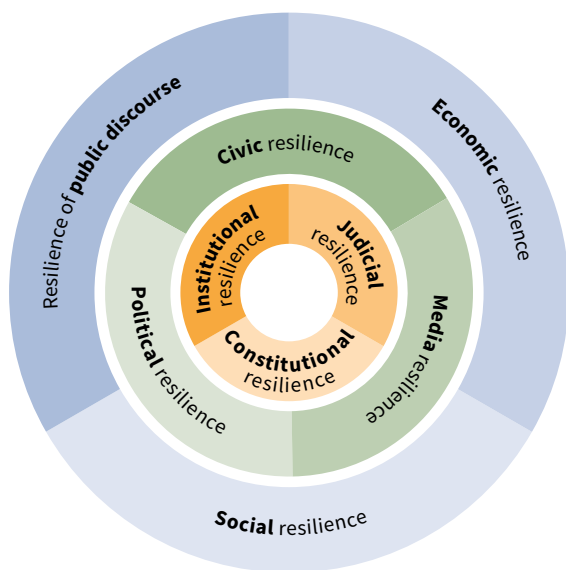
About the project

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

