

RESILIO

Country Report

Ireland



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1. Introduction

Ireland has been a fully functioning parliamentary democracy with an independent judiciary since 1922, operating under its current constitution since 1937.

Formal compliance with the Constitution by the executive, organisations, and individuals is generally very high. If anything, Irish governments may be too risk averse as regards testing the limits of the policies that could be adopted in conformity with constitutional norms and Ireland's international human rights obligations.¹

Governments consistently comply with court decisions, including those invalidating legislation or restraining exercise of executive power. Judicial independence is specifically guaranteed by the Constitution² and well respected in practice. Ireland has consistently had a level of per capita public expenditure on the judicial system that is well above the average for EU member states.³ People in Ireland score among the highest in the EU in their perceptions that the independence of the justice system is very good or fairly good; this has held steady for the last five years and is broadly comparable to the levels of public confidence in Germany, the Netherlands, and Sweden.⁴

Save for a very few special advisors, public servants are impartial and politically neutral. Almost all public servants are selected by a public appointments service that

is independent of influence from any elected official or political party. Regarding public perceptions of corruption or maladministration, Ireland fares relatively well in international surveys, for example those conducted by Transparency International.⁵

The independent Electoral Commission in practice decides what the boundaries of parliamentary constituencies are to be and has either an oversight role or direct responsibility for most other aspects of the conduct of elections and referendums.

In the most recent relevant Eurobarometer survey (conducted in March 2023), 14% of respondents in Ireland were very satisfied with the way democracy works in the country and 42% were somewhat satisfied, in combination, the ninth-highest level in the EU.⁶ According to Standard Eurobarometer 100 (fieldwork in October-November 2023), 51% of Irish respondents tend to trust the bicameral parliament, the Oireachtas (41% tend to distrust) and 50% tend to trust the Government of Ireland (43% tend to distrust).⁷ The voter turnout at the 2020 general election was 62.9%. Actual turnout (as a percentage of the actual voting age population) is likely to be several percentage points higher than reported.⁸

One of the world's leading experts concludes that 'that the level of proportionality of Irish elections is about average for a PR system ... comparable to such EU countries as

Poland, Portugal or Spain, rather than to those with very high proportionality ... such as Denmark, the Netherlands or Sweden.⁹ Nevertheless, this has produced a multi-party system; coalition governments are the norm and most parties have a turn in government, at least over a period of several decades. The 'effective number of parties' in the Dáil (lower house of parliament), according to one widely used measure, is now eight.¹⁰

Forty-two referendums on proposed constitutional amendments have been held since 1959, thirty-one of which have resulted in the adoption of the amendment proposed. Those have been conducted in a free and fair manner and subject to effective ex post facto judicial oversight.

Despite some concerns about a lack of transparency and diversity in media ownership and failures of corporate governance in the national public broadcaster, Irish media remain relatively diverse, vibrant and independent of government or political parties. Public service broadcasting in particular remains a key component of this.

Therefore, according to measures of performance across the most important factors that directly influence the quality of the rule of law, Ireland performs well and shows no evidence of significant backsliding of any sort.

2. Analysis of the country case along RESILIO model

2.1. Most important systemic factor: constitutional resilience

Constitutional resilience is the most important factor in maintaining the rule of law. Without that, the elements of institutional and judicial resilience would be either greatly diminished or lose much of their effectiveness in supporting the rule of law.

The Constitution of Ireland provides for a tripartite division of powers, legislative, executive and judicial, and for guarantees of fundamental rights, almost all of which are civil or political in nature. No provision of the Constitution is entrenched and all are open to amendment, but only by passing of a Bill through the Houses of the Oireachtas and its subsequent approval by the People at a referendum.¹¹

Articles 40-44 contain a range of civil and political rights that would be familiar to those acquainted with the constitutional systems of many other EU member states: personal rights, family rights, educational rights, the rights of children, property rights, and religious rights. Article 38.1 also contains a guarantee that no person may be tried on any criminal charge save in due course of law. All of these are judicially enforceable and the High Court, Court of Appeal, and Supreme Court may declare an Act of the Oireachtas to be invalid if it is found to be repugnant to any of these provisions, something that is expressly provided for in the Constitution.¹² The power to declare Acts of the Oireachtas to be wholly or partially invalid is one that is regularly exercised by the courts.¹³ The Supreme Court has recently clarified that where it is claimed that executive action has adversely affected a constitutional right, the same standard of judicial review applies as if the validity of legislation were being considered.¹⁴

Articles 40-44 have not remained static since they were enacted by the People in 1937, but have been amended relatively frequently: to remove the special position of the Catholic Church and the recognition of other named religious denominations,¹⁵ to remove the prohibition on divorce,¹⁶ to allow for the right to bail of accused persons to be restricted,¹⁷ to introduce a new Article 42A on children's rights,¹⁸ to provide that marriage may be contracted in accordance with law by two persons without distinction as to their sex,¹⁹ and to remove the requirement from the Constitution that blasphemy be a criminal offence.²⁰ A constitutional prohibition on the death penalty was also introduced by way of constitutional amendment.²¹ Thus, the catalogue of fundamental rights contained in the Constitution is relatively open to development through constitutional amendment.²² This is a point to which the Supreme Court recently referred, at least in general terms.²³

The recalcitrance of the Irish voters is well known, from their initial rejection of both the Nice Treaty and the Lisbon Treaty, each of which were subsequently approved at a referendum but only after certain modifications were made to each proposal.²⁴ This is part of a wider and more long-standing pattern. Looking at the general trend of constitutional amendments over the last nine decades, in terms of weakening or strengthening the rule of law, two sets of amendments are noteworthy.

Firstly, the People have twice voted overwhelmingly to curtail the rights of marginalised groups (that of persons accused of criminal offences to bail and that of the children of migrants to Irish citizenship).²⁵ However, the legal norms introduced by those changes would be regarded as unremarkable in most other EU member states and appear to comply with all the State's obligations under international human rights law. There was a similarly crushing majority in favour of the proposal to allow judges' remuneration to be reduced in certain situations.²⁶

Conversely, the People have rejected several proposals to amend the Constitution in ways perceived as being particularly advantageous to the party or parties proposing that amendment or as increasing the power of parliamentarians generally or of the Dáil Éireann specifically. The People twice rejected proposals to change the system for electing the Dáil Éireann from proportional representation by the single transferable vote to first-past-the-post.²⁷ In 2011, the People rejected a proposal that would have significantly increased the power of the Houses of the Oireachtas to conduct inquiries into the conduct of individuals, including holders of public office.²⁸ In 2013, they rejected the proposal to abolish the second chamber, Seanad Éireann.²⁹

Many voters appear able to separate support for a political party or parties from their views of the proposals for amending the Constitution made by those political actors. For example, at the 2011 general election, Fine Gael and Labour between them won 55.5% of the first preference vote, but at the referendum in relation to Oireachtas inquiries proposal held eight months later, only 46.66% of the voters supported their proposal (even though it was also supported by the two largest opposition parties and the simultaneous proposal in relation to judicial remuneration secured 79.74% approval.) Two years later, the Government's proposal (opposed by Fianna Fáil, supported by Sinn Féin) to abolish the Seanad was also defeated (48.27% to 51.73%), while the People simultaneously approved by the establishment of a Court of Appeal, supported by the government parties and both main opposition parties (65.16% to 34.84%).

Irish voters are thus well able to separate their support for a particular political party or group of parties from the de-

cision that has to be made at a referendum as to whether to approve a proposal for constitutional change that that party or those parties have made.

Justiciable constitutional guarantees of the separation of powers and of fundamental rights and the People's sense of ownership of them – strengthened by their willingness to reject proposals for amendment, irrespective of the political quarter from which they have emerged – would mean little if there were not effective guarantees of judicial independence and an impartial and effective public service more generally.

As noted in the introduction, there appears to be little concern about the independence and impartiality of the judiciary. Such academic research as exists tends to bear this out; one study, based on an analysis of over 5000 Supreme Court decisions, found no evidence of partisanship in decision-making, by reference to which parties had been in Government when the judges were appointed.³⁰

The independence of judges in the exercise of their judicial functions is guaranteed by the Constitution.³¹ This can be enforced by the courts themselves, as in a case where the systematic use of the executive power to remit criminal penalties as, in effect, a parallel but secret system of appeal against sentences imposed by courts was found to be unconstitutional.³² Although the Constitution was amended in 2011 to remove the prohibition on reducing judges' remuneration during their continuance in office, the exercise of the power to do so remains subject to judicial review with respect to the principle of judicial independence, particularly should such a reduction be imposed other than in accordance with the recommendations of an independent public sector pay review body (which was what the judges sought at the time of the 2011 referendum).³³

In this respect, the judiciary seems to be merely a special case of an aspect of public service culture more broadly. For example, in the University of Gothenburg report *The Quality of Government Expert Survey 2020 (Wave III)*, Ireland has an overall 'professionalism' score for the public service of 2,081 (broadly comparable with France or the United Kingdom), with particular strengths in the areas of the merit principle and security of tenure.³⁴

A recent example of good practice, though largely in the sense of following emerging European norms, is in relation to judicial appointments. This previously highly controversial issue seems to have been largely settled, for the foreseeable future, by the enactment of the Judicial Appointments Commission Act 2023, twelve provisions of which were referred to the Supreme Court by the President of Ireland under Article 26 of the Constitution and found not to be repugnant to the Constitution.³⁵ In argument before the Supreme Court, counsel for the Attorney General stated that part of what the Bill aimed to do was ‘guarding against for the future is people who, populist groups who wave the flag of democratic accountability in aid of an entirely government-dominated system’ of judicial appointment.³⁶ The 2023 Act now ensures that the Government is constrained by law to appoint as judges only persons (normally from a shortlist of three for each vacancy) who have been recommended as being suitable for such appointment by the independent Judicial Appointments Commission. This Commission consists of half of voting members and half lay members, who are appointed following a selection process conducted by the independent Public Appointments Service.³⁷

2.2 Most important subsidiary factor: political resilience

The integrity and fairness of elections has not been seriously called into question in recent decades. Electoral petitions are brought before the courts from time to time in relation to specific elections, but these are essentially concerned with disputes over whether there have been technical violations of electoral law, not allegations of widespread fraud or similar irregularities.³⁸

Lack of widespread concern about the integrity of elections is not surprising, given that civil servants who act at the direction of Government Ministers have virtually no operational role in the process, at any stage. Electoral administration is largely entrusted to local government officials, who are highly insulated from political influence or control at local as well as national levels, and by returning officers, who are independent public officials, not subject to any ministerial control or direction. This has now been supplemented by the oversight role given to the recently-established independent Electoral Commission.³⁹

There are also specific constitutional barriers to governmental manipulation of the electoral process to its own advantage. The decision that a Government may not use public funds to promote a specific outcome at a referendum was partly based, by at least one judge, on the premise that such expenditure, to promote the re-election of a Government, at a general election is constitutionally prohibited.⁴⁰ This principle was confirmed and applied by *Kelly v Minister for the Environment*, in relation to discrimination between incumbent and non-incumbent candidates.⁴¹

As noted in the introduction, the impact of the electoral system (proportional representation by the single transferable vote) on the party system and government formation has been that no single party has won an overall majority since the 1977 general election, no single party government has been formed since 1989, and coalitions of three (or more) parties have long been a recurring feature of the system (1948-51, 1954-57, 1994-97 and 2020 to date).

Despite the only moderately proportional character of the electoral system, the party system has tended to fragment over the last 50 years. Three parties (Fianna Fáil, Fine Gael and Labour) that, between them, won 95% of the first preference votes and 98.6% of the seats at the 1973 general election, gained only 47.5% of votes and 49.4% of seats at the last general election in 2020. At that election, no party received more than 25% of the first preference votes or more than 25% of the seats. Nevertheless, this degree of fragmentation has generally not led to major difficulties in government formation, although the process may sometimes be a protracted one, or lead to governments that are unstable once they have been formed.⁴²

This diffusion of governmental responsibilities and need for a wide range of parties to consider, at least over the medium-term, different permutations for the formation of a coalition government does appear, in the Irish case, to have tended to strengthen rather than undermine constitutionalism and rule of law values in government specifically.

Commitment to liberal democracy in Ireland generally is relatively high; for example, in response to a recent Eurobarometer survey, 59% of respondents described themselves as in the political ‘centre’ as opposed to an EU average of 39%.⁴³

Ireland ‘scores well internationally on community participation and the spirit of neighbourliness ... [but] low on participation in democratic decision-making processes at local, regional and national levels.’⁴⁴ For example, Ireland has the third highest proportion in Europe of adults regularly involved in unpaid voluntary work and Irish people, young and old, participate more frequently than any other Europeans in social activities.⁴⁵ However, there is also awareness that the continuation of these high levels of community wellbeing and social capital cannot be taken for granted.⁴⁶

As noted briefly in the introduction, Irish media remain relatively diverse, vibrant, and independent of government or political parties. In the current (2023) RSF Reporters without Borders Index, Ireland is placed second in the world, behind only Norway.⁴⁷ As the Future of the Media Commission put it: ‘Ireland’s media system has served the public extraordinarily well. Ireland’s media is well regarded internationally for its independence, trustworthiness, plurality, diversity and impact. Media in Ireland operate in, and contribute to, a society that enjoys high levels of social cohesion and public confidence in the institutions of democracy.’⁴⁸

Government formation in Ireland requires that a majority be found in Dáil Éireann to nominate a new Taoiseach (or to renominate the existing one) for appointment by the President of Ireland.⁴⁹ Given the practice of ‘confidence and supply’ agreements between the Government and one or more of the opposition parties, this may be facilitated, where necessary, through constructive abstention. The President, in turn, has no explicit role in proposing who might fill the role of Taoiseach. A former Taoiseach expressed concern that this might be a dangerous gap in the Constitution, which could lead to parliamentary deadlock over the formation of a new Government.⁵⁰ However, in practice, this danger has not yet been realised. In the aftermath of a general election, party leaders have been fully capable, whenever required, to engage in exploratory talks and then negotiations over a programme for government (and now perhaps also a confidence and supply agreement) that lead, although perhaps only after several months, to a new Government being formed. The formalisation of the conventions and practices around this process of government-formation through inter-party negotiation is one of the most positive developments in Irish political culture over the last forty years.

2.3 Most important contextual factor: resilience of the public discourse

By international standards, the levels of civility in public discourse and sensitivity to supposed departures from that are relatively high, at least as far as statements by elected public representatives are concerned. The relatively low level of supposed incivility on the part of political opponents can be deemed sufficient to trigger a public complaint.⁵¹ Indeed, *ad hominem* attacks on political opponents can often rebound on those who make them, rather than damaging the intended target politically, as was the case in the 1990 presidential election campaign.⁵² For journalists and commentators too, exposure as having engaged in manipulative or abuse practices online can spell the end of a professional career.⁵³

There has been problematic use of social media and other online platforms either by users not associated with a major party or who deliberately conceal that association (and often their true identity) in order to make abusive and harmful statements about politicians and other public figures. Sinn Féin’s political opponents often allege some degree of at least informal coordination between the party and such internet users, but that party is quick to reply that it has no more connection with this than any of its opponents do.⁵⁴ Women politicians, in both parts of Ireland, face a disproportionate amount of online abuse, much of it explicitly misogynistic and sometimes threatening.⁵⁵

Some legislative developments are intended to deal, at least indirectly, with this phenomenon, such as the Harassment, Harmful Communications and Related Offences Act 2020⁵⁶ and the Online Safety and Media Regulation Act 2022,⁵⁷ now supplemented by the EU Digital Services Act and the EU Terrorist Content Online Regulation. The independent broadcasting and online safety regulator Coimisiún na Meán is responsible for the enforcement of all three of these in Ireland. For example, following large scale public disorder in the centre of Dublin on 23 November 2023, Coimisiún na Meán engaged with the main online platforms which are its responsibility to regulate.⁵⁸ The extent and nature of that engagement became the subject of some controversy, at least in the case of X.⁵⁹

Because the EMEA headquarters of so many major platforms are located in Ireland, how well Coimisiún na Meán and other Irish authorities cope with this regulatory task has European, at the very least, as well as national implications.⁶⁰

The Electoral Commission has the function of regulating online political advertising, electoral process information, online electoral information, and manipulative or inauthentic behaviour in relation to elections.⁶¹ As well as what regulatory action the Commission takes, a provision which has not yet been brought into operation would make it a criminal offence to use an undisclosed bot to mislead or influence an election or a referendum.⁶² The practical effectiveness of these measures has yet to be tested.

In relation to national prosperity, a distinction needs to be made between Gross Domestic Product and Gross National Income (or the Modified GNI or Modified Domestic Demand, measures favoured by the Central Bank of Ireland).⁶³ Even allowing for that, Ireland is very much a high-income economy. If GDP per capita were the appropriate yardstick (which it is widely agreed it is not) the World Bank ranks Ireland as the third richest country in the world.⁶⁴ If (unmodified) GNI per capita is the measure, then Ireland is still fourth in the world.⁶⁵ The International Monetary Fund's latest assessment is that 'Ireland's economy has shown remarkable resilience in the face of consecutive shocks' and the 'outlook is a soft landing.'⁶⁶

Ireland's latest Human Development Index (HDI) is 0.945, closely comparable to Germany, Denmark, or Australia.⁶⁷ This is a dramatic increase over the 1990 value of 0.737 and a dramatic improvement relative to most other EU member states.⁶⁸ Ireland's most recently calculated Gini coefficient is 28.0%.⁶⁹ If calculated using market income (i.e. employment, pension, and other income) only it would be 48.9%. Adding income from social transfers reduces the Gini coefficient on gross income to 36.9% and deduction of tax, social insurance contributions, pension contributions and inter-household transfers paid leaves the coefficient for disposable income as 28.0%.

Collins and Murphy point out that

the redistributive system, and the combined effects of its taxes and transfers, has been very ef-

fective at reducing poverty risks and high market income inequalities. ... [T]he high levels of market inequality in the Irish growth model are made tolerable by the high efficacy of Irish welfare transfers.⁷⁰

In that regard, the Irish welfare system is quite distinct from, and has not undergone many of the systemic changes seen in, systems in other English-speaking countries.

[I]n the Irish case it is the absence of ideological debate that is striking and it is difficult to discern any significant welfare reform agenda from any political party. ... The innate conservatism of Irish policy making derives from the relationship between the institutions of the existing political system and the veto political culture they create, the political and economic elites that use their influence to preserve the status quo and conservative and neoliberal ideologies that undermine state investment in social policy. A more ambitious social agenda necessitates institutional reform, political party realignment and fundamental changes in public culture and values.⁷¹

Recent events might suggest widespread anti-migrant sentiments that are so strong that they could lead to major social upheaval or a significant change in the political landscape: notably major public disorder in the centre of Dublin in late November 2023, and a series of arson attacks on unoccupied properties believed to be earmarked as accommodation for migrants, together with pickets on such locations by local protestors. However, these have to be put in some perspective. It remains to be determined, but seems doubtful, that the arson attacks, although relatively numerous, have any degree of central direction or organisation.⁷² Even the spectacular riots in Dublin are believed by police to be largely the work of opportunistic mobs of looters, rather than being directed or controlled by the far-right activists who initially instigated them.⁷³

There is no indication in opinion polls of any increase in support for far-right parties whose central objectives parallel some of the presumed motivation behind these recent riots and acts of arson. Indeed, evidence from the most recent opinion poll shows nuanced attitudes towards migration; on the one hand, the level of concern about im-

migration has sharply increased and clear-to-overwhelming majorities of all socio-economic groups (except 18-24 year olds) and the supporters of all parties (except Fine Gael, Labour, and the Green Party) favour a more closed rather than a more open immigration policy or the status quo. On the other, all groups (except farmers and Sinn Féin supporters) consider that, to date, the overall impact of immigration has been more positive than negative and it would either make no difference to how most people in all groups would vote, or make them less likely to vote for a candidate who espoused concerns about immigration.⁷⁴

The urban/rural divide has become more pronounced in recent years over issues such as environmental protection, international trade and, more recently, immigration. However, instead being a source of serious social division, this is more likely to lead to some kind of farmers' party re-emerging with parliamentary representation, as happened on twice before (the Farmers Party, 1922-32 and Clann na Talmhan, 1939-65), and would similarly be absorbed into the conventional political system as another potential coalition partner for the larger parties.⁷⁵

3. How crises can affect the rule of law

The democratic process in Ireland has shown itself very resilient in the face of crises and capable of dealing with them without compromising any of its fundamental values.

The states of emergency declared in connection with the Second World War (1939 to 1946, formally until 1976)⁷⁶ and the post-1969 armed conflict in Northern Ireland (1976 to 1995),⁷⁷ while they enabled the imposition, in the first period, of draconian measures such as censorship and rationing and, in the second, seven-day detention without judicial authorisation (although this lasted for one year only), did not result in any backsliding in terms of the democratic system itself, or the rule of law requirements for its operation. For instance, general elections were held in 1943 and 1944, which produced results broadly similar to those of elections on either side of the Second World War. Even apart from those emergencies, parts of the 'ordinary law' such special non-jury courts,⁷⁸ internment without trial,⁷⁹ and the exclusion of spokespersons or candidates of a lawful political party from access to the broadcast media,⁸⁰ - the first of which still exists and the second

and third of which did for considerable periods (almost a quarter of a century in the case of the 'broadcasting ban') - have raised serious (and in the case of special criminal courts, ongoing) human rights concerns. Nevertheless, there is no evidence that they were ever instrumentalized by any Government in order to interfere with the normal political process or to restrict legitimate public protest.

Similarly, the economic difficulties that Ireland experienced from 2008 onward and which became subsumed into the wider Eurozone crisis and the austerity imposed in response to it had surprisingly little impact on the constitutional system. Kenny, Kotsoni and Musgrove-McCann have recently explored this in relation to the failure of Irish constitutionalism to respond to various aspects of the crisis, if not with constitutionally protected social rights as such, at least by drawing on broader constitutional principles such as equality or dignity, as happened in Greece, Portugal, and elsewhere.⁸¹ As noted earlier (see page 5), the People rejected a 2011 proposal to significantly increase the power of the Houses of the Oireachtas to conduct inquiries into the conduct of individuals, including public office holders, and a 2013 proposal to abolish the second chamber, Seanad Éireann. Both were responses, broadly populist, by the Government parties to the crisis of confidence in the politics that developed over the previous three to five years, and the demand for consideration of an entirely new Constitution. That both referendums were defeated is an indication that the electorate rapidly lost any appetite it may have had for significant institutional innovation or change.⁸²

If the crises associated with challenges to the authority of the State, the conflict in Northern Ireland, and the severe economic difficulties of the 2008-13 period did not bring forth any real threat to the democratic system or the rule of law, the Irish State's response to the COVID-19 pandemic was even further from doing so. Casey and Kenny offer a nuanced and thoughtful critique of the failure to adequately respect the rule of law values that ought to characterise the proper response of the administrative state.⁸³ However, their subject is '*moderate* but important rule of law failures that beset [a] successful and ultimately *benign* crisis response.'⁸⁴

Given these examples, the Irish case does not seem to present any features of instrumentalization of crises or their other adverse impacts on the rule of law worthy of further note.

4. Conclusion

Ireland remains, as it has been for most of its years of independence since 1922, a stable constitutional democracy, with a regular alternation of power between different parties as the result of free and fair elections. More specifically, it has a relatively open and flexible party system, which promotes broad-based coalitions and, at least over the medium- to long-term, cross-party cooperation. This diffusion of governmental responsibility and political power has, in the Irish context, tended to promote a vigorous form of constitutionalism and the rule of law values associated with it. The specific form of the Irish constitutional system and in particular the mechanism for amendment of the constitution by referendum has also tended to strengthen constitutionalism and the rule of law, by introducing a distinction between constitutional politics and ordinary electoral politics, which enables a decisive section of the electorate to separate their views on any specific proposed amendment of the constitution from their party affiliation (if any) or their preferences for government formation.⁸⁵ When combined with strong traditions of judicial independence (underpinned by the considerable degree of power the constitution gives to the judiciary), and of integrity and impartiality across the public service generally, this provides an environment which is conducive to the maintenance of the rule of law. More fundamentally, this whole system is underpinned by an electorate that is predominantly centrist in orientation, in the context of a society that lacks many of the basic cleavages found in other European countries, and of a political culture that in the main sees little realistic alternative to the pragmatic pursuit of national interests by political elites within wider European and international frameworks.

Sources

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- 2 Constitution of Ireland, Art. 35.2.
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- 9 Michael Gallagher (2023), 'A New Electoral System? The Options' in John Coakley et al. (eds.), Politics in the Republic of Ireland (7th ed., Routledge) 107.
- 10 Liam Weeks, 'The new-ish party system?' in Coakley et al. (n 9) 140.
- 11 Constitution of Ireland, Arts.
- 12 Art 15.4.2°; Art 34.3.2°.
- 13 Gerard Hogan, David Kenny, and Rachel Walsh (2015), 'An Anthology of Declarations of Unconstitutionality,' Irish Jurist 54, 1-30.
- 14 Burke v Minister for Education [2022] IESC 1.
- 15 Fifth Amendment of the Constitution Act, 1972.
- 16 Fifteenth Amendment of the Constitution Act, 1995; see also the Thirty-eighth Amendment of the Constitution (Dissolution of Marriage) Act 2019, making the conditions for dissolving a marriage more flexible.
- 17 Sixteenth Amendment of the Constitution Act, 1996.
- 18 Thirty-First Amendment of the Constitution (Children) Act 2012.
- 19 Thirty-fourth Amendment of the Constitution (Marriage Equality) Act 2015.
- 20 Thirty-seventh Amendment of the Constitution (Repeal of offence of publication or utterance of blasphemous matter) Act 2018.
- 21 Twenty-first Amendment of the Constitution Act, 2001.
- 22 In that period the Constitution was also amended so as first to introduce the right to life of the unborn (Eighth Amendment of the Constitution Act, 1983, as qualified by the Thirteenth Amendment of the Constitution Act, 1992 and Fourteenth Amendment of the Constitution Act, 1992) and then to remove that right altogether, leaving the termination of pregnancy to be regulated by law (Thirty-sixth Amendment of the Constitution Act 2018).
- 23 O'Meara v Minister for Social Protection [2024] IESC 1 O'Donnell CJ para 157.
- 24 Twenty-fourth Amendment of the Constitution Bill 2001 (rejected by referendum, 7 June 2001); Twenty-sixth Amendment of the Constitution Act, 2002 (approved at referendum, 19 October 2002); Twenty-eighth Amendment of the Constitution Bill 2008 (rejected by referendum, 12 June 2008); Twenty-Eighth Amendment of the Constitution (Treaty of Lisbon) Act 2009 (approved by referendum, 2 October 2009).

- 25 Sixteenth Amendment of the Constitution Act, 1996 (bail); Twenty-seventh Amendment of the Constitution Act 2004 (citizenship).
- 26 Twenty-Ninth Amendment of the Constitution (Judges' Remuneration) Act 2011; T John O'Dowd (2012), 'Judges in whose cause? The Irish bench after the judges' pay referendum,' *Irish Jurist* 48, 102-131.
- 27 Third Amendment of the Constitution Bill, 1958; Fourth Amendment of the Constitution Bill, 1968.
- 28 Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011.
- 29 Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013. See n 85 below for the most recent and most spectacular example, in the March 2024 referendums, of the electorate's lack of compliance with the lead given by political elites).
- 30 Robert Elgie, Adam McAuley and Eoin O'Malley (2018), 'The (not-so-surprising) non-partisanship of the Irish Supreme Court,' *Irish Political Studies* 33:1, 88-111.
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- 35 *Re Judicial Appointments Commission Bill 2022* [2023] IESC 34. This means that the constitutionality of the corresponding sections of the Act cannot be challenged in any court: Constitution, Art 34.3.3°.
- 36 *Re Judicial Appointments Commission Bill 2022* — Transcript of Oral Argument before the Supreme Court: Day 2 (16 November 2023) 202.
- 37 *Judicial Appointments Commission Act 2023*.
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About the author

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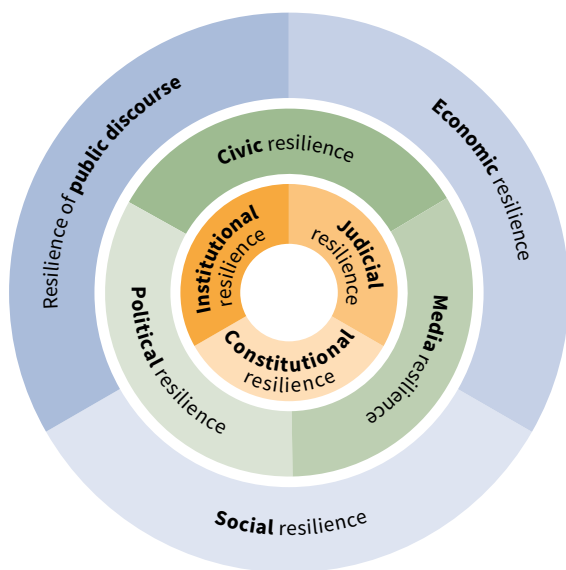
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RESILIO aims to identify institutional and societal factors that make the rule of law more resilient, thus adding a constructive contribution to academic and policy debates. It draws on a ‘thick’ definition of the rule of law, understood as closely 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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