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Resilience observatory on the rule
of law in EU accession candidates

RESILIO-ACCESS Snapshot Series

Distinguishing Democratic Resilience and Rule of Law Resilience

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1. Introduction

A “third wave of autocratisation” has been washing over political regimes worldwide. Democracies are particularly affected by erosion, while autocracies are deepening, too.¹ Extensive research in the past years has established that democratic erosion is driven by ‘erosion agents’ – democratically elected leaders who hollow out democratic norms, processes and structures.² Often under a legalistic façade, erosion agents undermine the rule of law by aggrandising executive power at the expense of accountability mechanisms and the separation of powers.³

Against this backdrop, scholars are increasingly turning to ‘democratic resilience’ to study the conditions, institutions and processes by which democracies might withstand autocratisation.⁴ Existing theoretical and empirical scholarship on democratic resilience emphasises the rule of law as an important resource for democracies’ institutional stability. However, they differ widely in their conceptualisations and measurements of the rule of law. Moreover, the deliberate attacks on the rule of law by erosion agents underline the need to study the resilience of the rule of law itself. Such an approach provides important insights into how rule of law resilience can contribute to democratic resilience in general.

“Deliberate attacks on the rule of law by erosion agents underline the need to study the resilience of the rule of law itself.”

This RESILIO-ACCESS Snapshot aims to distinguish the concepts of democratic resilience and the resilience of rule of law by delineating their commonalities and differences. It argues that although intertwined, democratic resilience and rule of law resilience are analytically distinct concepts. While the former captures a democratic regime’s overall capacity to withstand autocratisation, the latter focuses on the legal, institutional, and societal factors that enable the rule of law to adapt to, resist, and recover from attacks. This Snapshot provides a theoretical framework and proposes concrete indicators for a systematic empirical study of rule of law resilience.

2. Democratic resilience and the rule of law

Against the backdrop of ongoing democratic regression, academic interest in democratic resilience has considerably increased over the past decade. Democratic resilience is usually defined as the capacity of a political regime to prevent or react to challenges without losing its democratic character.⁵ This capacity enables a democratic system to process stressors in such a way that its persistence becomes more probable.⁶ It is the product of resilience resources on different levels, including political institutions and parties, civil society, or the media.⁷

Existing scholarship agrees that the rule of law, as a general principle, and its specific legal procedures and associated institutions – independent courts, constitutions, accountability mechanisms – are important sources of democratic resilience.⁸ However, two shortcomings in the existing literature remain.

First, while there is consensus on its role as a structural “guardrail” of democracies,⁹ understandings of the rule of law and its distinct contributions as a source of democratic resilience differ widely. For instance, Merkel and Lührmann emphasise the separation of powers amongst the main constitutional bodies or institutionalised accountability mechanisms.¹⁰ In contrast, Croissant and Lott distinguish between executive constraints (accountability mechanisms) and the rule of law (protection of individual and collective rights, especially economic rights).¹¹ How the rule of law is understood is barely explained in the existing literature, but the various conceptions thereof have important implications for the analysis of its role in democratic resilience overall.

Second, a broader conceptual issue is whether rule of law regression is seen as a cause or an effect of democratic decline. For some, weak and declining rule of law predisposes regimes to democratic regression, enabling ambitious rulers to hollow out political competition.¹² Others describe the deliberate erosion of the rule of law as a distinct modality of “would-be autocrats”.¹³ Vice versa, many ongoing democratisation processes are characterised by pro-democratic actors strengthening the rule of law after taking office.¹⁴ Yet, empirical research on rule of law backsliding remains scarce.¹⁵

For the broader discussion on democratic resilience, these seeming contradictions necessitate conceptualisations and measurements of the resilience potential of the rule of law *itself*.

3. Approaches to conceptualise and measure rule of law resilience – RESILIO & RESILIO-ACCESS

Existing democratic resilience research often employs an institutional approach, focusing on distinct political-legal institutions such as national constitutions¹⁶ or a country’s judiciary.¹⁷ However, beyond its institutional implementation, the rule of law as a “durable system of laws, institutions, norms, and community commitment”¹⁸ depends on many more and less tangible aspects than legal documents or court rulings. Its legitimacy depends on popular support, while its viability benefits from transparency, accountability, and criticism.¹⁹ In other words, a “rule-of-law culture”²⁰ or a “rule of law-oriented political morality” is needed for resilience.²¹

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3.1. The RESILIO approach

Based on this assumption, in 2024, the project “RESILIO – Resilience Observatory on the Rule of Law in Europe” provided the first holistic conceptual and empirical assessment of the resilience of the rule of law in the 27 EU member states.²² According to RESILIO, resilience means that “the rule of law can experience hazardous events or incremental threats without losing its core function, structure and purposes”. It identified sources of resilience not only in constitutional texts and institutions but also in external social, political, cultural and economic circumstances.²³ RESILIO used a ‘thick’ definition of the rule of law, as set out by primary EU law.²⁴

Emphasising that rule of law resilience measures a system’s defence potential rather than its status quo, RESILIO identified the factors influencing different EU member states’ abilities to withstand attacks on the rule of law. These factors were situated at three dimensions. First, systemic resilience factors corresponding to the core components of the rule of law. Second, subsidiary factors such as civil society or independent media acting as watchdogs against threats. Third, contextual factors contributing to a beneficial environment of the rule of law, e.g. economic development.²⁵

Based on this three-tiered model, RESILIO built an additive resilience index using a range of data sources including, inter alia, data from Eurostat, Varieties of Democracy (V-Dem) and the World Justice Project (WJP). The empirical analysis showed that an integrity-based civil service, an independent judiciary, an active democratic citizenry, a public discourse marked by mutual tolerance, and a diverse media landscape are all central to sustaining rule of law resilience.

These findings underscore the close interlinkages between democratic resilience and rule of law resilience, as they both benefit from robust public institutions, independent media, and civic engagement. The findings also illustrate the potential for a more detailed measurement in light of concrete challenges the rule of law faces today.

3.2. The RESILIO-ACCESS approach

The successor project “RESILIO-ACCESS – Resilience Observatory on the Rule of Law in EU Accession Candidates” builds on the findings and conceptual groundwork of RESILIO.²⁶ Both projects start from the insight that resilience depends on a range of systematic, institutional, and societal resources. RESILIO deliberately refrained from measuring the state of the rule of law itself and instead constructed an additive index of resilience resources, treating overall resilience as the sum of individual subindices.

In comparison, RESILIO-ACCESS extends and refines the RESILIO approach geographically, theoretically and methodologically. Geographically, it focuses on EU aspirants in the Western Balkan region – Albania, Bosnia and Herzegovina, Kosovo,²⁷ Montenegro, North Macedonia, and Serbia – as well as Georgia, Moldova and Ukraine. Persistent challenges in these countries such as societal polarisation, systemic corruption or foreign interference – first and foremost, Russia’s war of aggression against Ukraine – underscore the need for a stable rule of law to prevent democratic breakdown. At the same time, the accession process requires candidates to implement a range of reforms in the areas of justice, fundamental rights, and institutional stability. Thus, assessing candidates’ rule of law resilience pre- and post-accession presents a unique opportunity to scrutinise the success of the accession process itself.

Theoretically, RESILIO-ACCESS situates resilience of the rule of law in the current state of research on democratic resilience according to which resilience, in general, and democratic resilience, specifically, are interpreted as capacities.²⁸ Thus, while building on the same definition of the rule of law as RESILIO, RESILIO-ACCESS defines rule of law resilience as its capacity to prevent, cope with or recover from hazardous events or incremental threats without losing its core function, structure and purpose.

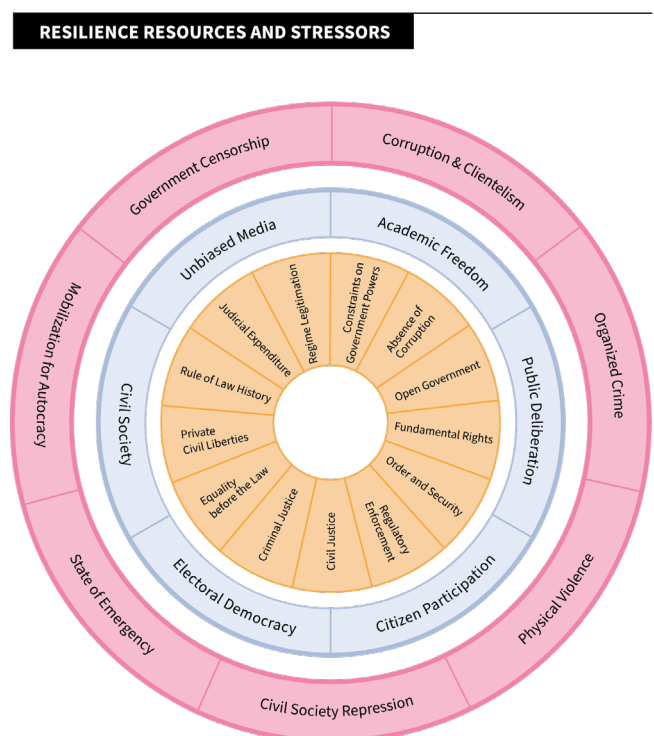
This reading of resilience as capacity aims to identify and measure the resources that are hypothesised to better position a system to respond to stressors and recover more fully.²⁹ Such resources can be expected to include not only constitutional texts and institutions but also traditions, culture, civil society, media attention as well as international reporting and pressure.³⁰ The RESILIO-ACCESS model (Figure 1) distinguishes three dimensions of such resilience resources.

First, primary resilience resources refer to the eight widely accepted structural components of the system of the rule of law itself, as defined by the World Justice Project.³¹ Additionally, these aspects are complemented by six components to account for our maximalist conception of the rule of law. They include, inter alia, the legal culture, which is operationalised by the historical continuity of the rule of law in a country, but also equality before the law and expenditure for judicial systems.

Second, subsidiary resilience resources refer to the social environment in which the rule of law is embedded. These include, amongst others, a robust civil society, unbiased media, academic freedom and the quality of democracy. Third, since resilience can only be understood properly against the stressors to the rule of law, RESILIO-ACCESS adds a contextual dimension to its resilience assessment. This dimension of stressors accounts for the most common drivers of democratic erosion identified in the literature, including executive aggrandisement, media capture and the curtailment of civic space.

These three dimensions – primary resilience resources of the rule of law itself, subsidiary resources of its social environment, and the stressors it faces – enable a holistic study of the resilience capacity of the rule of law.

Figure 1: RESILIO-ACCESS model of rule of law resilience.



Furthermore, RESILIO-ACCESS refines the methodological approach for studying rule of law resilience by combining additive and multiplicative indexing. This enables statistical exploration of how various indicators contribute to the overall resilience score more granularly. RESILIO-ACCESS does not merely study the resilience capacity (the availability of resilience resources) of the rule of law. By including the most important stressors, it also measures the rule of law's performance (how it withstands threats). The project thus holistically operationalises resilience as an interaction between resources and the pressures these resources face.

Lastly, RESILIO-ACCESS also uses an improved data base, integrating updated V-Dem and World Justice Project indicators as well as additional dimensions, such as academic freedom, and expands the geographical scope to cover EU accession candidates. As such, the second project phase has moved from a resource-oriented, largely potential-based measurement to a stressor-aware assessment of both the capacity and the actual performance of the rule of law under threat.

4. Conclusion

Democracy and the rule of law are “mutually dependent and mutually reinforcing” principles.³² The rule of law prevents the arbitrary use power, binds the government and populace by the law, and thus offers societies security, trust, and liberty.³³ Existing research on democratic resilience emphasizes this stabilising function the rule of law provides for democracies.

This stabilising function hinges on the capacity of the rule of law itself to withstand crises, attacks and erosion. However, recent evidence on rule of law backsliding shows that its deterioration has been driven by the weakening of limits on state power, especially governmental and non-governmental checks and balances, and the protection of fundamental rights and freedoms.³⁴ For the debate on democratic resilience, this means that the resilience capacity of the rule of law must be studied as an analytically distinct concept in need of clear conceptualisation and measurement. RESILIO-ACCESS provides researchers with a theoretically informed and reproducible set of indicators that is adaptable to country cases globally.

Future research on the nexus between democratic and rule of law resilience should study the specific mechanisms that have led to rule of law backsliding,³⁵ and how it can be restored after a breakdown.³⁶ Furthermore, cases of democratic recovery and ‘democratic typo in frontsliding’³⁷ present the opportunity to analyse whether turnarounds (so-called ‘U-Turns’³⁸) are more probable and sustainable if the rule of law is still relatively intact. To address these questions, RESILIO-ACCESS offers important conceptual and empirical insights for debates on the resilience of democracies in challenging times.

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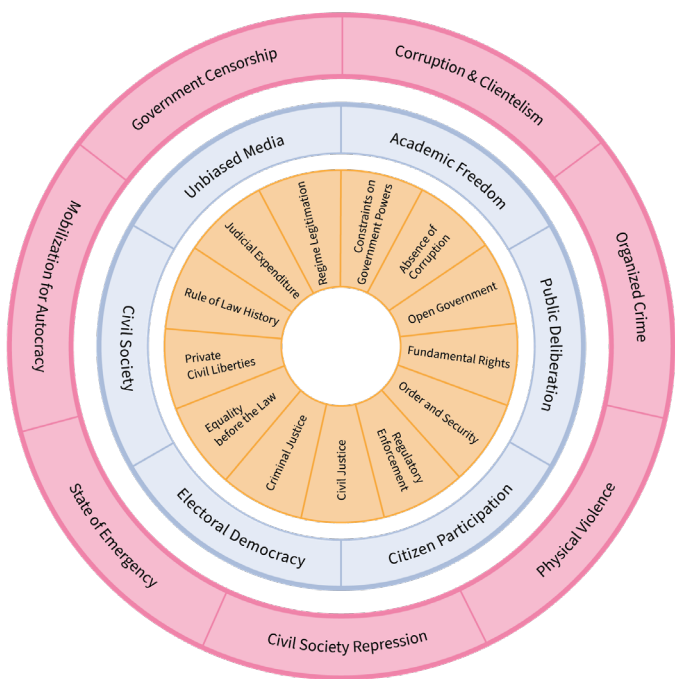
About the project

RESILIO-ACCESS investigates the resilience of the rule of law in the current (potential) candidate states for EU accession. The project explores how to measure the resilience of the rule of law and assesses the potential of the EU's enlargement policy toolbox to foster resilience in the region. Resilience here means the capacity of the rule of law to prevent, cope with or recover from hazardous events or incremental threats without losing its core function, structure and purpose.

About the paper

This paper is part of the **#RESILIO-ACCESS Snapshot Series**, a collection of compact analyses that explain ties between resilience resources of the rule of law identified by the RESILIO-ACCESS model.

RESILIENCE RESOURCES AND STRESSORS



The RESILIO-ACCESS model is based on three dimensions: The system of the rule of law itself provides primary resilience resources such as an effective judicial system, the protection of fundamental rights, and regulatory enforcement.

These resources are embedded into a social environment with subsidiary resilience resources such as civil society, academia, and the media.

However, these resources are constantly being challenged by threats such as autocracy, corruption, violence, or censorship. The characteristics of each dimension, their interactions and their conditions of resilience resources determine the overall resilience capacity of the rule of law.

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