

SUMMARY OF THE GREENS/EFA STUDY “THE RESILIENCE OF THE FRENCH LEGAL SYSTEM TO A POTENTIAL “AUTHORITARIAN SHOCK” (PECH, PLATON ET AL., 2022)

DISMANTLING DEMOCRACY AND THE RULE OF LAW

MILESTONES

1. STARTING POINT: CITIZENS LOSE FAITH IN THEIR GOVERNMENT SYSTEM

Reasons: rising inequality, persisting unemployment, corruption...

Consequences: party crisis, increasingly populist positions.

2. CITIZENS VOTE TO BREAK WITH THE PREVIOUS SYSTEM

Consequences: the new party in place will multiply early “reforms” and ignore all criticism by presenting them as carrying out the “will of the people”.

3. THE NEW AUTOCRATS SEIZE POWER AND COUNTERPOWER

In particular: justice, police, regulation authorities...

4. THE PUBLIC SPHERE IS GRADUALLY DOMINATED BY THE RULING PARTY

In practice: elimination of alternative discourses through formal or informal repression of civil society, journalists, researchers and activists.

5. ELECTORAL RULES CHANGE IN FAVOUR OF THE ESTABLISHED POWER

For example: modification of the rules for acquiring the right to vote, remapping electoral constituencies, takeover of the authority (or authorities) in charge of the elections.

6. THE SYSTEM IS THEN CAPTURED GLOBALLY, WITH FEW OPTIONS LEFT FOR THE OPPOSITION

7. IF NECESSARY, THE ESTABLISHED POWER ORGANISES BIASED REFERENDUMS TO LEGITIMISE ITS ACTIONS

In case of internal resistance or external criticism, the ruling party will invoke the “will of the people” to bypass the last institutional obstacles.

8. PUBLIC FUNDS ARE « REDISTRIBUTED », AND FICTITIOUS ENEMIES AND SCAPEGOATS ARE REPORTED BEFORE THE NEXT ELECTION

FINISHING POINT: THE POSSIBILITY OF A PEACEFUL CHANGE OF POWER HAS BECOME ALMOST IMPOSSIBLE

Based on: L. Pech and K. L. Scheppele, 'Illiberalism Within: Rule of Law Backsliding in the EU' (2017) 19 Cambridge Yearbook of European Legal Studies 3

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THE AUTOCRATIC STRESS TEST

THE FRENCH CASE

What are the vulnerabilities of the French legal system that a new authoritarian majority could exploit?

This study draws on the examples of Poland and Hungary. These two EU member states are perfect illustrations of these processes of **constitutional capture**, used by autocratic parties to consolidate their power by using the weaknesses of their legal system.

The purpose of this study is inspired by the banking supervision technique of stress testing. The authors subjected the French legal system to an autocratic stress test, identifying which vulnerabilities could be exploited by a new authoritarian political majority.

1. STRENGTHEN THE EXECUTIVE POWER IN THE FACE OF LEGISLATIVE POWER

- Via:
- Use of **ordinances** (Article 38 of the Constitution)
 - Call for **referendums** (Article 11 of the Constitution)
 - Use of **exceptional powers** (Article 16 of the Constitution)

2. ATTACK THE INDEPENDENCE OF THE JUDICIARY

- Via:
- For the **judicial order**: The Supreme Council of Magistracy and the Public Ministry
 - For the **administrative order**: The Council of State
 - For the **Constitutional Council**, the status of its members

3. INSTRUMENTALISE THE PUBLIC SERVICE

- Via:
- The **recruitment** of public agents
 - Their **status**: delimitation of the duty of obedience, career organization...

4. WEAKEN INDEPENDENT ADMINISTRATIVE AUTHORITIES (IAA) & INDEPENDENT PUBLIC AUTHORITIES (IPA)

- Via:
- Their guarantees of independence
 - The nomination of their members
 - Their budgetary autonomy

5. ANNIHILATE NON-INSTITUTIONAL COUNTERPOWERS

- Via the takeover of:
- Public and private media
 - Civil society and freedom of association
 - Intermediate bodies
 - University