



Hungary's Fourth Authorization Act: Completing the Efforts to Grant the Government Excessive Regulatory Powers Once Again

9 June 2022

On 8 June 2022, the governing majority in the Hungarian Parliament adopted Act VI of 2022 on Eliminating the Consequences in Hungary of an Armed Conflict and Humanitarian Disaster in a Neighbouring Country (the "Fourth Authorization Act"), which entered into force the same day. The Fourth Authorization Act completes the Hungarian Government's efforts to keep its excessive regulatory powers acquired first with a view to the pandemic by using the war in Ukraine as a pretext, and to be able to rule by decree without any parliamentary oversight.

Background: the Government declaring a state of danger referring to the war in Ukraine

The adoption of the Fourth Authorization Act was preceded by unwarranted and unnecessary constitutional and statutory amendments. On 24 May 2022, the governing majority in the Parliament adopted the 10th Amendment to the Fundamental Law of Hungary, along with Act III of 2022, which amended the Disaster Management Act. Both Bills were proposed by the Government, and entered into force on 25 May 2022.

The 10th Amendment changed the wording of Article 53(1) of the Fundamental Law, and authorised the Government to declare a "state of danger" in the case of an "armed conflict, war or humanitarian disaster in a neighbouring country" as well (the state of danger being the form of special legal order declared by the Government three times during the pandemic). As a result, the Government gained the power to adopt emergency decrees by means of which it may, as provided for by the Disaster Management Act, "suspend the application of certain Acts of Parliament, derogate from the provisions of Acts of Parliament and take other extraordinary measures". The accompanying legislation that amended the Disaster Management Act provided the Government with yet another *carte blanche* mandate to override Acts of Parliament via such special emergency decrees during a state of danger declared due to an armed conflict, war or humanitarian disaster in a neighbouring country. This latter new provision was almost a verbatim copy of an earlier amendment, adopted in June 2020, which granted a similar *carte blanche* mandate to the Government for instances of a state of danger declared with a view to a pandemic.¹ (The original text of the Disaster Management Act contained a closed list of measures that the Government could take through emergency decrees in a state of danger, however, both the June 2020 and the May 2022 amendments opened this list and authorised the Government to take any other measures beyond the ones listed if its deemed necessary with a view to the epidemic and the war respectively.)

The Government made use of the possibility to declare this new type of state of danger instantly, and, as of 25 May 2022, declared a state of danger due to the "armed conflict and humanitarian disaster in the territory of Ukraine, and in order to eliminate the consequences of these in Hungary" in Government Decree 180/2022. (V. 24.). The new state of danger was declared even though most of the legal changes adopted since the outbreak of the war, including key elements such as the triggering

¹ For more detailed information on these amendments, see the Hungarian Helsinki Committee's information note of 5 May 2022 here: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/05/HHC_HU_10th_const_amendment_05052022.pdf.

of the temporary protection scheme and the details of services provided to those having obtained temporary protection status, could have been introduced under the normal legal order.

Since at this point the latest state of danger declared with a reference to the pandemic was still in effect, on the same day, the Government also terminated that state of danger as of 1 June 2022.

The Fourth Authorization Act

According to Article 53(3) of the Fundamental Law, emergency government decrees adopted during a state of danger can remain in effect after an initial period of 15 days only with the Parliament's approval given in full knowledge of the contents of the decrees. Thus, according to the constitutional framework, the Parliament has to authorize the Government to extend the force of the specific decrees. During the three states of danger declared by the Government due to the pandemic, this safeguard was regularly circumvented by three so-called "authorization acts", removing parliamentary oversight over individual decrees. The Fourth Authorization Act fulfils the same purpose regarding the new state of danger declared with a reference to the war in Ukraine, following the same pattern that the Hungarian Government and governing parties used during the COVID-19 pandemic to grant excessive regulatory powers to the Government.²

In more detail, the Fourth Authorization Act sets out the following:

- In Article 2, the Parliament authorizes the Government to extend the effect of the emergency government decrees adopted in the state of danger until the termination of the state of danger by the Government. This provision eliminates the substantive constitutional restriction that such emergency decrees should remain in effect after an initial period of 15 days only with the Parliament's approval, since it authorizes the Government to extend the effect of future, not-yet-adopted emergency decrees, the content of which is of course unknown to the Parliament.
- Article 3 of the Fourth Authorization Act "affirms" all emergency decrees adopted under the new state of danger until the coming into force of the Fourth Authorization Act (that is, between 25 May and 8 June 2022), thereby allowing the Government to keep these decrees in force as long as it wishes (but not longer than the new state of danger is in place).
- Article 4 of the Fourth Authorization Act "approves" as well Government Decree 190/2022. (V. 26.), which, as of 1 June 2022, re-entered into force 37 emergency decrees adopted under the previous states of danger declared due to the pandemic, to avoid that these decrees lose their force on 1 June as a result of the previous state of danger being terminated. It is important to note that 19 of these 37 decrees were adopted way before the start of the war in Ukraine (mostly in 2021), and have therefore no connection whatsoever to the war. A remarkable example from a human rights viewpoint is a government decree from 2020 that excessively extended the deadline for authorities to respond to freedom of information requests.

The Fourth Authorization Act will lose its force on 1 November 2022 (presumably because this is the date when the 9th Amendment to the Fundamental Law, which alters the entire constitutional framework of special legal orders, including the state of danger, will enter into force). Since declaring and terminating a state of danger is the purview of the Government, this does not influence the Government's power to terminate the state of danger earlier than that.

² For further information, see the Hungarian Helsinki Committee's overview about the emergency regimes under the pandemic in Hungary here: <https://helsinki.hu/en/emergency-regimes-in-hungary-under-the-pandemic/>.

Why does the power to rule by decree have significance if there is a parliamentary supermajority?

At the national elections in April 2022, the governing parties Fidesz and KDNP gained a parliamentary supermajority for the fourth time in a row since 2010. With their two-thirds supermajority, the governing parties are able to amend any law (including the Fundamental Law) by themselves. Since Members of Parliament from the governing parties always follow the party line, this has meant in the past 12 years that the Government and governing party MPs have been able to push through the Parliament basically every Bill they desired without any support of the opposition (with a brief interlude when they temporarily lost their two-thirds majority), often within very short timeframes. Coupled with regulatory changes narrowing the possibilities of the opposition and steps such as the governing majority regularly obstructing discussions in parliamentary committees or the Speaker of the Parliament overusing his extensive disciplinary powers in a partisan manner resulted in a situation whereby the lack of inclusiveness and transparency (such as omitting public consultations) which have characterised the legislative process outside the Parliament in the past years could not be remedied in the Parliament either.³

However, the fact that the Fourth Authorization Act completely removes parliamentary oversight once again is still significant, and not just because it circumvents constitutional provisions adopted by the very same ruling majority that it now practically excludes from the legislative process. The Parliament should still be the stage for representative democracy and the open debate attached to that, where the opposition parties have, albeit limited, rights and possibilities: opposition MPs could still take the floor and debate whether it is justified to adopt certain measures with a reference to the state of danger, could question whether it is necessary to extend the effect of certain emergency decrees, and so forth. With the Government “ruling by decree”, there is no room for that, and thus the possibilities of the parliamentary opposition dwindle further. What is more, governing party MPs are also deprived from the chance to influence legislation. The legislative process loses the last remnants of inclusiveness and transparency, even the last formal and symbolic safeguards in terms of parliamentary oversight are removed, and, once again, all power is placed in the hands of the Government – and, ultimately, the Prime Minister.

³ For more information, see: https://helsinki.hu/wp-content/uploads/2021/03/AIHU_EKINT_HHC_UPR2021_Hungary_RoL_web.pdf, pp. 13-15.