



The Hungarian government first acquired excessive emergency powers with a view to the pandemic in the spring of 2020: it declared a “state of danger” (*veszélyhelyzet*), a special legal order regime, while the governing majority transformed the legislative framework in a way that the Government had a *carte blanche* mandate to override any Act of Parliament via emergency government decrees once a state of danger was declared. The Government has been maintaining a “rule by decree” system ever since, with only a few months of intermission, lately using the war in Ukraine as a pretext for keeping its excessive regulatory powers. The constitutional and statutory framework governing the various special legal order regimes was amended as of 1 November 2022, and these amendments cemented the very problematic practices developed during the pandemic in relation to the state of danger. The state of danger declared with a reference to the war in Ukraine is currently extended until 29 May 2023.

The present paper summarizes the main concerns regarding the state of danger, presents the current legal framework and its evolution, provides examples of the inappropriate use of emergency decrees, and forms recommendations to remedy shortcomings.

Main concerns regarding the state of danger

- The legal framework **allows the Government to override basically any Act of Parliament** in emergency government decrees during a state of danger due to the excessive, *carte blanche* mandate the Government was granted by law in terms of the scope and subject matter of these decrees.
- In addition, in a state of danger, the Fundamental Law allows for the emergency government decrees **to suspend or restrict most fundamental rights beyond the extent permissible under ordinary circumstances.**
- There is **no automatic and regular parliamentary oversight over individual emergency decrees**, also depriving the opposition from the possibility to contest the government decrees publicly in the Parliament.
- The **Government continues to use its mandate to issue emergency decrees extensively and in an abusive manner**, for purposes not related to the ground for the state of danger (previously the pandemic, presently the war).
- Emergency decrees are **not subject to obligatory public consultation.**
- The **effective constitutional review of the emergency decrees is not ensured**, also because demands by the opposition and independent NGOs that the Constitutional Court should review the constitutionality of such decrees in an accelerated procedure has been neglected by the ruling majority.

The current constitutional and statutory framework

Provisions of the 9th Amendment to the Fundamental Law and accompanying laws that entered into force on 1 November 2022 transformed the framework for special legal order regimes, including the state of danger.¹ Thus, since 1 November 2022, the state of danger has been based on a new constitutional and statutory wording, but these changes mainly mean that problematic practices developed during the pandemic have been cemented by the legislator into the Hungarian legal system.

According to the current wording of Article 51(1) of the Fundamental Law, the Government may declare a state of danger **in the event of an armed conflict, war situation or humanitarian catastrophe in a neighbouring country, or a serious incident endangering life and property**, in particular a natural disaster or industrial accident, and in order to eliminate the consequences thereof. The Government can declare the state of danger initially for 30 days, and following that the Parliament can authorize (with a two-thirds majority of the MPs present) the Government to extend it.² Statutory rules add that this authorization can be given for a maximum of 180 days per occasion,³ but there is no limit set out as to how many times this can be repeated.

Under Article 53(1) of the Fundamental Law, during the period of a special legal order, **the Government may** adopt decrees by means of which it may, as provided for by a cardinal Act of Parliament, **suspend the application of certain Acts of Parliament, derogate from the provisions of Acts of Parliament** and take other extraordinary measures.

The cardinal law referred to here is (as of 1 November 2022) Act XCIII of 2021 on the Coordination of Defence and Security Activities, which includes a similar *carte blanche* mandate in terms of the scope and subject matter of the emergency government decrees as the one created during the pandemic. It sets out that the purpose of the government decrees shall be “to guarantee for citizens the safety of life and health, personal safety, the safety of assets, and legal certainty, as well as the stability of the national economy”.⁴ Subsequently, it lists the regulatory subjects in relation which the Government may exercise its emergency regulatory powers.⁵ However, this list is not only overly broadly framed, but its last point makes the Government’s possibilities in terms of taking extraordinary measures virtually unlimited, since it sets out that the Government may also exercise its extraordinary powers in any other regulatory areas that are directly related to the prevention, management, elimination, and the prevention or remedying of the harmful effects of an event giving rise to a state of war, state of emergency or state of danger.⁶ This makes the list of potential regulatory subjects practically open ended and therefore the new **statutory rules are too general and thus not capable of imposing any meaningful limit** on the extraordinary powers of the Government.

In addition, under Article 52 of the Fundamental Law, during the period of special legal order, **the exercise of fundamental rights**, except for the right to life, the ban on torture and the right to a fair

¹ A detailed analysis of the changes, covering also the special order regimes beyond the state of danger, is available here: Gábor Mészáros: *Exceptional Governmental Measures without Constitutional Restraints*, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/Meszáros_special_legal_order_02112022.pdf.

² Fundamental Law, Article 51(2)-(4)

³ Act XCIII of 2021 on the Coordination of Defence and Security Activities, Article 82/A

⁴ Act XCIII of 2021 on the Coordination of Defence and Security Activities, Article 80(1)

⁵ Such as personal liberty and living conditions, economic and supply security, restrictions with a security purpose affecting communities and the provision of information to the population, the functioning of the state and local governments, the protection or restoration of lawful order, public order and public security, or national defence and mobilisation. See: Act XCIII of 2021 on the Coordination of Defence and Security Activities, Article 80(2).

⁶ Act XCIII of 2021 on the Coordination of Defence and Security Activities, Article 80(2)(g)

criminal trial **may be suspended, or may be restricted beyond the extent permissible under ordinary circumstances.**

Under the new rules, the **emergency decrees issued by the Government automatically remain in force until the termination of the state of danger** – thus, the earlier constitutional rule that emergency government decrees need the approval of the Parliament to stay in force after an initial 15-day period is no longer applicable. This means that the **regular and automatic parliamentary oversight over individual emergency decrees has been completely removed**, cementing the framework created in the past years via the so-called “Authorization Acts” (see in more detail below). This also deprives opposition MPs from the opportunity to take the floor in the Parliament and debate publicly and in a timely manner whether it is justified to adopt or maintain certain decrees with a reference to the state of danger.⁷

As of 1 November 2022, the Government declared a new state of danger under these new rules, with a reference to the war on Ukraine,⁸ and subsequently the Government extended the state of danger with an additional 180 days⁹ based on the Parliament’s authorization.¹⁰

It shall be stressed that the new legal framework **continues to not include any provisions that would facilitate the swift and effective constitutional review** of government decrees adopted in a state of danger, such as a provision prescribing a short deadline for the Constitutional Court to decide on complaints regarding emergency decrees. This severely undermines the effectiveness of the constitutional review of the special legal order decrees, as demonstrated by the fact that the Constitutional Court refused to decide on the constitutionality of at least three emergency decrees on the basis that by the time it got down to adjudicating the respective petitions, the decrees had not been in force any more.¹¹

Evolution of the legal framework: extending the Government’s powers

Since the legislative steps taken in relation to the constitutional and statutory framework pertaining to the special legal order in general and to the state of danger specifically show a clear attempt to concentrate as much power in the hands of the Government as possible, it is worth looking at how the current legal framework came to exist.

As already referred to above, **the Government acquired excessive regulatory powers first during the COVID-19 pandemic.**¹² It ordered a state of danger with a reference to the pandemic the first time on

⁷ For more on why the power to rule by decree has significance if there is a parliamentary supermajority, see: Hungarian Helsinki Committee, *Hungary’s Fourth Authorization Act: Completing the Efforts to Grant the Government Excessive Regulatory Powers Once Again*, 9 May 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/06/HHC_HU_4th_Authorization_Act_09062022.pdf, p. 3.

⁸ Government Decree 424/2022. (X. 28.) on Declaring a State of Danger Due to the Armed Conflict and Humanitarian Catastrophe in the Territory of Ukraine, and in Order to Eliminate and Manage the Consequences of these in Hungary and on Certain State of Danger Rules

⁹ Government Decree 479/2022. (XI. 28.) on Extending the State of Danger Declared Due to the Armed Conflict and Humanitarian Catastrophe in the Territory of Ukraine, and in Order to Eliminate and Manage the Consequences of these in Hungary

¹⁰ Act XLII of 2022 on Eliminating and Managing the Consequences in Hungary of an Armed Conflict and Humanitarian Catastrophe in a Neighbouring Country

¹¹ This happened, for instance, in relation to the new labour law legislation [Decision no. 3326/2020. (VIII. 5.) AB], the rules on designating special economic zones [Decision no. 3388/2020. (X. 22.) AB] and to the extended, 45-day deadline for fulfilling freedom of information requests [Decision no. 3413/2020. (XI. 26.) AB].

¹² For a full overview, see: Hungarian Helsinki Committee, *Overview of Hungary’s Emergency Regimes Introduced due to the COVID-19 Pandemic. Update of 1 June 2022*, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/06/HHC_Hungary_emergency_measures_overview_01062022.pdf.

11 March 2020, and two more times after that. (Under the constitutional rules applicable at the time, the Government could declare a state of danger without a concrete time limitation.) The state of danger based on the pandemic was maintained by the Government until 31 May 2022 (with the exception of the period between 18 June and 3 November 2020). This also means that the Government was in the position to suspend or derogate from Acts of Parliament also during the period directly leading up to the national elections, held on 3 April 2022.

During the pandemic period, the governing majority **transformed the legislative framework in a way that the Government had a *carte blanche* mandate** to override (suspend or derogate from) any Act of Parliament via emergency government decrees once a state of danger was declared. This was coupled by the practice of the parliamentary majority issuing a series of so-called “**Authorization Acts**”, which **circumvented the substantive constitutional restriction that emergency government decrees should remain in effect after an initial period of 15 days only with the Parliament’s approval**, and authorized the Government to extend the effect of future, not-yet-adopted emergency decrees until the end of the state of danger. This **removed meaningful parliamentary oversight**.

As a next step, on 24 May 2022, the governing majority adopted the **10th Amendment to the Fundamental Law**, which **authorized the Government to declare a state of danger in the case of an armed conflict, war situation or humanitarian catastrophe in a neighbouring country**.¹³ This was accompanied by a law¹⁴ that excessively widened the scope of emergency decrees the Government can issue during such a state of danger, providing it with yet another *carte blanche* mandate to suspend or derogate from Acts of Parliament. The Government made use of the possibility to declare the new type of state of danger instantly, as of 25 May 2022, with a reference to the “armed conflict and humanitarian catastrophe” in Ukraine.¹⁵ Subsequently, the Fourth Authorization Act¹⁶ removed parliamentary oversight over individual emergency decrees, following the practice developed during the COVID-19 pandemic.¹⁷ Thus, the amendments **allowed the Government to use the war in Ukraine as a pretext for keeping its excessive regulatory powers** acquired with a view to the pandemic, and maintain a rule by decree system.

Parallel to declaring a state of danger with a reference to the war, as of 1 June 2022 the Government terminated the state of danger declared due to the pandemic.¹⁸ As a result, all respective emergency decrees issued lost their force, with the exception of 37 decrees that were specifically kept in force under the new state of danger declared due to the war.¹⁹ It is worth noting that 19 of these 37 decrees were adopted way before the start of the war (mostly in 2021), and had no connection to it

¹³ For more details, see: Hungarian Helsinki Committee, *The 10th Amendment of Hungary’s Fundamental Law: the Hungarian Government is using the war in Ukraine as a pretext to keep its excessive regulatory powers*, 5 May 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/05/HHC_HU_10th_const_amendment_05052022.pdf.

¹⁴ Act III of 2022 on the Amendment of Act CXXVIII of 2011 on Disaster Management and Amending Certain Related Acts of Parliament

¹⁵ Government Decree 180/2022. (V. 24.) on Declaring a State of Danger Due to the Armed Conflict and Humanitarian Catastrophe in the Territory of Ukraine, and in Order to Eliminate the Consequences of these in Hungary and on Certain State of Danger Rules

¹⁶ Act VI of 2022 on Eliminating the Consequences in Hungary of an Armed Conflict and Humanitarian Catastrophe in a Neighbouring Country

¹⁷ For more information, see: Hungarian Helsinki Committee, *Hungary’s Fourth Authorization Act: Completing the Efforts to Grant the Government Excessive Regulatory Powers Once Again*, 9 May 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/06/HHC_HU_4th_Authorization_Act_09062022.pdf.

¹⁸ Government Decree 181/2022. (V. 24.) on Declaring a State of Danger and Terminating the State of Danger Declared by Government Decree 27/2021. (I. 29.) on Declaring a State of Danger and the Entry into Force of State of Danger Measures

¹⁹ For more details, see: Hungarian Helsinki Committee, *Hungary’s Fourth Authorization Act: Completing the Efforts to Grant the Government Excessive Regulatory Powers Once Again*, 9 May 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/06/HHC_HU_4th_Authorization_Act_09062022.pdf.

whatsoever. A remarkable example is a decree from 2020 that excessively extended the deadline for authorities to respond to freedom of information requests.²⁰

Finally, **as of 1 November 2022, provisions of the 9th Amendment to the Fundamental Law and the accompanying statutory rules** entered into force, and transformed the whole legal framework of special legal orders. As described in the previous section, this new legal framework **cemented the very problematic practices developed during the pandemic in relation to the state of danger**, in particular the Government's excessive, basically *carte blanche* mandate and the lack of parliamentary oversight over individual decrees.

It is worth noting that the 9th Amendment to the Fundamental Law brought a concentration of powers in the hands of the Government in general in relation to the special legal order regimes. The 9th Amendment replaced the previous six special legal order regimes with three: the state of danger, the "state of war" (*hadiállapot*), and the "state of emergency" (*szükségállapot*). The most important change is that **all three new special legal order regimes concentrate power in the hands of the Government without adequate constitutional restraints**. This means that in all three regimes, the Government has become exclusively entitled to issue special legal order laws, i.e. it has the exclusive possibility to rule by decree, whereas in the previous system there were regimes in which the primary holder of extraordinary powers was the National Defence Council (where the parliamentary opposition was also represented)²¹ or the President of the Republic. According to an expert opinion, the amendments serve one purpose: to provide the Government with exclusive and effectively unlimited powers in any exceptional situation.²²

Finally, it shall be mentioned that neither the previous, nor the current legal framework prevents the **proliferation of the different states of crisis**, i.e. that quasi states of exception that are not regulated in the Fundamental Law but only on a statutory level can be applied parallel to the special legal order regimes included in the Fundamental Law. As a result, the so-called "state of medical crisis" (*egészségügyi válsághelyzet*) was maintained by the Government from 18 June 2020 until 18 December 2022, mostly parallel to the state of danger.²³ An even more striking example is the "state of crisis due to mass migration" (*tömeges bevándorlás okozta válsághelyzet*), which was introduced into the Hungarian law in September 2015, and has been maintained by the Government ever since (often in periods when its statutory conditions were not even in place), currently being extended until 7 September 2023.²⁴ During this state of crisis special rules apply to third-country nationals irregularly entering and/or staying in Hungary and to those seeking asylum, and certain provisions of the Asylum Act are suspended. Currently, the following derogations remain relevant: pushbacks (i.e. collective expulsions) are legalised from the entire territory of Hungary;²⁵ the police, upon receiving specific written order to that end, may enter any apartment in order to ensure measures related to the

²⁰ Government Decree 521/2020. (XI. 25.) on Derogations from Certain Data Request Provisions During the State of Danger

²¹ The National Defence Council consisted of the President of the Republic (as the Council's president), the Speaker of the Parliament, the leaders of the parliamentary groups, the Prime Minister, the Ministers, and (with a consultative status) the Chief of the Armed Forces.

²² For a detailed analysis, see: Gábor Mészáros: *Exceptional Governmental Measures without Constitutional Restraints*, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/Meszáros_special_legal_order_02112022.pdf.

²³ For more details on what this entailed, see: Hungarian Helsinki Committee, *Overview of Hungary's Emergency Regimes Introduced due to the COVID-19 Pandemic. Update of 1 June 2022*, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/06/HHC_Hungary_emergency_measures_overview_01062022.pdf, pp. 4-5.

²⁴ Government Decree 46/2023. (II. 21.) on Amending Government Decree 41/2016. (III. 9.) on the Declaration of the State of Crisis due to Mass Migration Throughout the Territory of Hungary and on the Rules Related to the Declaration, Existence and Termination of the State of Crisis

²⁵ Act LXXXIX of 2007 on State Borders, Article 5(1b)

pandemic;²⁶ and the military, with the right to bear arms, participates in managing the mass migration crisis and in border protection.²⁷

Excessive and inappropriate use of state of danger decrees

The Government has been using its emergency powers “extensively”.²⁸ According to the statistics of a legal service provider,²⁹ for example **in 2022, 42% of all government decrees (267 out of 637) were adopted as emergency decrees**, either with a reference to the pandemic or the war. As a comparison: in 2020, at the height of the pandemic, fewer, 257 such government decrees were issued. Also, a good portion of these decrees, 82 out of the 267 were issued in November-December 2022, when the war’s focus shifted to further East.

While a good part of the emergency decrees issued during the state of danger declared due to COVID-19 were indeed related to the pandemic, the Government repeatedly used its authorization to adopt decrees to “regulate matters unrelated to the COVID-19 pandemic”,³⁰ and several emergency decrees issued in this period raised rule of law and human rights concerns. The practice of **regularly adopting decrees for purposes not related to the cause of the state of danger** continued also during the state of danger declared due to the war. Examples for problematic decrees from 2022 and 2023 include the following:

- In January 2022, a decree³¹ **lifted tax secrecy in order to enable the tax authority to send information letters** to beneficiaries of a new, unusually generous tax refund just before the elections. On this basis, a letter signed by the Prime Minister was sent out a week before the launch of the election campaign,³² being another example of the “pervasive overlap of government information and ruling party messaging” in terms of the election, criticized by OSCE/ODIHR.³³
- In February 2022, a decree³⁴ **overruled a judicial decision quashing a ministerial decision limiting media access to hospitals and thereby limited media freedom**. The decree vested the Government’s pandemic taskforce with full and exclusive discretion to regulate relations between the media and healthcare institutions during the pandemic.³⁵ On this basis, for instance, hospital directors were banned from talking to independent media during the pandemic.
- Also in February 2022, another decree³⁶ **restricted teachers’ right to strike** for better pay and working conditions when it determined the “necessary minimum services” that must be provided

²⁶ Act XXXIV of 1994 on Police, Article 35/B(c)

²⁷ Act CXL of 2021 on National Defence and the Hungarian Armed Forces, Article 59(1)(i)

²⁸ European Commission, *2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf, p. 25.

²⁹ See: <https://www.wolterskluwer.com/hu-hu/news/2022-jogalkotasi-statisztika>.

³⁰ European Commission, *2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf, p. 25.

³¹ Government Decree 5/2022. (I. 12.) on Further Measures Related to Tax Refunds for Individuals Raising Children with a View to the State of Danger

³² For more details, see: Hungarian Helsinki Committee, *Baseline Information Note – National Elections of Hungary 2022*, 18 February 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/02/HU_electionmonitor_baseline.pdf, p. 6.

³³ OSCE Office of Democratic Institutions and Human Rights, *Hungary – Parliamentary Elections and Referendum – 3 April 2022. ODIHR Election Observation Mission. Final Report*, 29 July 2022, <https://www.osce.org/files/f/documents/2/6/523568.pdf>, pp. 20-21. and footnote 87.

³⁴ Government Decree 33/2022. (II. 4.) on Certain State of Danger Rules for the Operation of Healthcare Institutions

³⁵ European Commission, *2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf, p. 25., footnote 196.

³⁶ Government Decree 36/2022. (II. 11.) on Certain State of Danger Rules Affecting Public Education Institutions

during a strike in such a broad manner that made a meaningful and at the same time lawful strike impossible. The decree was preceded by the trade unions of teachers announcing plans to strike as of 16 March 2022 and being in negotiation with the respective Ministry about the exact “necessary minimum services” that must be provided during a strike under the Act on Strikes. This law prescribes that if the parties cannot agree on the level of such minimum services, they can request the court to establish what services must be provided during a strike. The teachers were about to turn to the court to have the dispute with the Ministry settled, when the Government issued the emergency decree in question. The decree restricted the rights of teachers without a legitimate aim, in an arbitrary and disproportionate manner, and prevented them from seeking meaningful judicial remedy, as the court could only conclude that since the level of necessary minimum services had been determined in a decree, it was not any more in the position to decide otherwise.

- In January 2023, yet another decree³⁷ **changed the rules of how employers can dismiss employees of educational institutions** (extending the deadline from 15 days to long months to be counted from the alleged violation of the labour obligations), thus putting more pressure on teachers who participate in civil disobedience due to the fact that their right to strike has been curbed.

Potential solutions and recommendations to the Hungarian authorities

- **The Government should show self-restraint in the use of the extremely wide-ranging authorization** it received during the state of danger, and it should avoid issuing decrees that are not related to the war in Ukraine.
- **The Parliament should be able to authorize the Government to extend the state of danger for a maximum of 90 days** per occasion.
- It should be **re-introduced** as a requirement into the Fundamental Law **that emergency government decrees in a state of danger can remain in force after an initial period only with the Parliament’s approval**. The wording of the law should make it clear that the Parliament has to approve the individual decrees, and so it cannot give the Government an open-ended authorization to issue and keep in force emergency decrees of yet unknown content.
- Provisions providing the Government a *carte blanche* mandate in terms of issuing emergency decrees in a state of danger should be revised: **the excessively wide scope of the potential content of the emergency decrees should be restricted**.
- It should be prescribed that **the Constitutional Court shall review emergency decrees brought before it within a short and fixed deadline**, to ensure timely constitutional review. The possibility of ***actio popularis* constitutional review** requests should be re-introduced for emergency decrees.

³⁷ Government Decree 4/2023 (I. 12.) on Certain State of Danger Rules Affecting Public Education Institutions