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Hungary: Perpetuated States of Exception Undermine Legal Certainty and Human Rights

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Four years have passed since the Hungarian Government first declared a state of danger, a special legal order regime, allowing it to override higher level laws in emergency decrees overnight. The Government has been maintaining its excessive emergency regulatory powers ever since, while the Fundamental Law was amended to concentrate powers in the hands of the Government in all special legal order regimes. The perpetuated state of danger and the excessive and abusive use of emergency decrees undermine the rule of law, and interfere with the operation of businesses in the EU's single market. Despite concerns voiced by stakeholders, including the European Commission, a new bill would once again allow the Government to extend the state of danger until November 2024. Another parallel state of crisis, ordered due to "mass migration", was extended again in early March by the Government without statutory criteria being met, entering into its ninth year.

State of danger: excessive regulatory powers

According to a [bill](#) submitted to the Parliament on 12 March 2024, the Government would, once again, receive an authorization from the Parliament to extend the "state of danger" (*veszélyhelyzet*) with an additional 180 days, until 19 November 2024. This would be a routine exercise for the Government, which has been maintaining its excessive emergency regulatory powers for four years now.

The Government first [acquired](#) excessive emergency powers with a view to the pandemic: it declared a state of danger (a special legal order regime) on 11 March 2020, while the legislative framework was transformed in a way that the Government had a *carte blanche* mandate to override any Act of Parliament via emergency 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. Since June 2022, it has been using the war in Ukraine as a pretext for keeping its excessive regulatory powers, relying on a [tailor-made constitutional amendment](#). The constitutional and statutory framework governing special legal order regimes in general was [amended](#) as of November 2022, and these amendments cemented the problematic practices developed during the pandemic.

Main concerns in terms of the current legal framework for the state of danger include the following:

- The legal framework allows the Government to override basically any Act of Parliament in emergency 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 – also 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 decrees publicly in the Parliament.
- The effective and swift constitutional review of emergency decrees is not ensured.

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. Statutory

rules add that this authorization can be given for a maximum of 180 days per occasion, but there is no limit set out as to how many times this can be repeated.

The Government has used the above-described, virtually unrestricted mandate to issue emergency decrees extensively and in an abusive manner. Since March 2020, it has adopted over a thousand emergency decrees, amounting to 30-42% of all government decrees issued annually. Several emergency decrees had no connection whatsoever to the cause of the state of danger (previously the pandemic, presently the war), but served the Government's political aims instead, raising rule of law and human rights concerns. To name a few examples: the Government used emergency decrees to [curtail the rights of teachers](#) demanding improvements in the public education system, to limit access to information, or to practically abolish personal public hearings.

The above legal framework and practice are in stark contrast with international standards, such as the [requirements](#) set out by the Council of Europe's Venice Commission. As put by the European Commission's [2023 Rule of Law Report](#) in its chapter on Hungary: "[I]legal certainty has been undermined by [...] the extensive and prolonged use of the Government's emergency powers, also interfering with the operation of businesses in the single market".

Concentration of powers in all special legal order regimes

The constitutional amendment that transformed the legal framework of the state danger as of 1 November 2022 also changed the constitutional rules of special legal order regimes in general, and brought a concentration of powers in the hands of the Government in all special legal order regimes.

The Ninth Amendment to the Fundamental Law 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, among other stakeholders, the parliamentary opposition was also represented) or the President of the Republic. (See Annex 1 for details.) These changes prompted the [Venice Commission](#) to voice concerns. According to [expert opinion](#), the amendments serve one purpose: to provide the Government with exclusive and effectively unlimited powers in any exceptional situation.

Proliferation of crises: the state of crisis due to mass migration

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.

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 which can be declared and extended by the Government every six months without any meaningful control. First, in September 2015, the state of crisis due to mass migration was ordered only for two counties, but then on 9 March 2016 the Government declared it for the whole of Hungary, and has repeatedly

extended it ever since, often in periods when its statutory conditions were not even in place. The state of crisis due to mass migration was extended the last time in early March 2024, without the statutory conditions being met, until 6 September 2024.

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:

- push-backs (i.e. collective expulsions) are legalised from the entire territory of Hungary (a practice which the Court of Justice of the European Union found to be in [violation of EU law](#));
- the police, upon receiving specific written order to that end, may enter any apartment in order to ensure measures related to epidemics; and
- the military, with the right to bear arms, participates in managing the mass migration crisis and in border protection.

The current constitutional and statutory framework of special legal order regimes and quasi states of exception is not in line with international standards, and the Government's practices related to the state of danger and the state of crisis due to mass migration violate the rule of law and fundamental rights. Therefore,

- **the legislative framework of special legal order regimes and quasi states of exception should be revised in line with international standards, in particular standards set by the Venice Commission, and Government's excessive emergency regulatory powers should be curtailed;**
- **the Government should show self-restraint in the use of the extremely wide-ranging authorization it received during the state of danger, and refrain from issuing emergency decrees that are not related to the war in Ukraine; and**
- **the Government should terminate the state of crisis due to mass migration and revise the respective legal framework in line with international standards and the relevant judgment of the Court of Justice of the European Union.**

For more information, see:

- Hungarian Helsinki Committee, [*Government gains excessive powers from forever renewable state of danger*](#) (24 February 2023)
- Gábor Mészáros, [*Exceptional Governmental Measures without Constitutional Restraints*](#) (2022)

Annex 1 – Special legal order regimes in Hungary’s Fundamental Law since 1 November 2022

	State of war (<i>hádiállapot</i>)	State of emergency (<i>szükségállapot</i>)	State of danger (<i>veszélyhelyzet</i>)
Who declares it?	Parliament, with a 2/3 majority of MPs, upon the initiative of the Government	Parliament, with a 2/3 majority of MPs, upon the initiative of the Government (initially for 30 days, after that it can be extended by 30 days with a 2/3 majority of MPs)	Government (initially for 30 days, after that it can be extended by a maximum of 180 days per occasion upon the authorization of the Parliament with a 2/3 majority of the MPs present)
On what basis can it be declared?	<ul style="list-style-type: none"> in the event of the declaration of a war situation or in the event of danger of war; in the event of external armed attack, an act with an impact equivalent to an external armed attack, or imminent danger thereof; or in the event of the fulfilment of an alliance commitment regarding collective defence 	<ul style="list-style-type: none"> in the event of an act aimed at overthrowing or subverting the constitutional order or at exclusively acquiring power; or in the event of a serious unlawful act massively endangering life and property 	<ul style="list-style-type: none"> 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
Who adopts the emergency measures?	Government (already after initiating the state of war)	Government (already after initiating the state of emergency)	Government