



Hungarian Helsinki Committee

## OVERVIEW OF HUNGARY'S EMERGENCY REGIMES INTRODUCED DUE TO THE COVID-19 PANDEMIC

27 January 2021

In the spring of 2020, the COVID-19 pandemic prompted countries to resort to emergency laws. An emergency regime was introduced in Hungary as well. However, the ruling majority in the Hungarian Parliament adopted a regime that granted **excessive regulatory powers to the Government** and was at odds with international standards. Referring to the pandemic, in March 2020 the Government first declared a "state of danger", and then acquired **a *carte blanche* mandate without any sunset clause to override any Act of Parliament**. Certain government decrees issued using this power raised rule of law and/or human rights concerns, and some were even in breach of EU law. Although the state of danger was terminated in June 2020, **amendments introduced** parallel to that **provided the Government with excessive powers that can be applied with a reference to an epidemic with significantly weakened constitutional safeguards**. These new provisions have been put to use during the second wave of the pandemic in Hungary in the autumn of 2020, and remain in force.

### Timeline

11 March 2020	The Government declared a state of danger ( <i>veszélyhelyzet</i> ), a special legal order included in the Fundamental Law (the constitution of Hungary). According to the Fundamental Law, a state of danger may only be declared and may only be terminated by the Government.
30 March 2020	The Parliament adopted Act XII of 2020 on the Containment of the Coronavirus (hereafter: Authorization Act), which (by significantly extending the authorization that the Fundamental Law provides to the Government to issue decrees in a state of danger) granted the Government a <i>carte blanche</i> mandate without a sunset clause to rule by decree. The Authorization Act entered into force the same day.
16 June 2020	Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness (hereafter: Transitional Act) was adopted, which fundamentally altered the legal framework applicable in a state of danger and in a state of medical crisis ( <i>egészségügyi válsághelyzet</i> ).
18 June 2020	<ul style="list-style-type: none"><li>• The Government terminated the state of danger.</li><li>• The Authorization Act was repealed by the Parliament on the basis of the state of danger being terminated. The end of the state of danger meant that the over 150 special (emergency) government decrees adopted during the state of danger lost their effect as well.</li><li>• The Transitional Act came into force.</li><li>• The Government declared a state of medical crisis for six months.</li></ul>
3 November 2020	The Government declared a state of danger for the second time.
10 November 2020	The Parliament adopted Act CIX of 2020 on the Containment of the Second Wave of the Coronavirus Pandemic (hereafter: Second Authorization Act), which entered into force the next day. The Second Authorization Act limits its own effect and so will lose its force after 8 February 2021.
17 December 2020	The Government extended the state of medical crisis until 18 June 2021.

*At the time of issuing this overview, there is both a state of danger and a state of medical crisis in effect in Hungary.*

## 1. The concept of the state of danger in the Fundamental Law

The state of danger is one of the “special legal orders” provided for by the Fundamental Law (Articles 53-54). According to the Fundamental Law, the state of danger **shall be declared and terminated by the Government**. The Government is not bound by any other actor when making its decision on declaring or terminating the state of danger, and so the Parliament has no say in the matter.

According to the concept outlined in the Fundamental Law, in a state of danger, **“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, derogate from the provisions of Acts and take other extraordinary measures”**. The cardinal law the Fundamental Law refers to here is the Disaster Management Act (Act CXXVIII of 2011), which contained a series of provisions describing the areas in which the Government may issue decrees in a state of danger. Furthermore, the Fundamental Law explicitly allows the Government in a state of danger **to suspend or restrict the exercising of fundamental rights beyond the extent permissible in ordinary circumstances** (with certain exceptions).

It is an important safeguard that according to the concept of the Fundamental Law, the above special, 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 support** given in full knowledge of the contents of the decrees. Thus, the Parliament has to authorize the Government to extend the force of the specific decrees.

## 2. The first state of danger and the first Authorization Act (March–June 2020)

After the Government declared a state of danger as per the Fundamental Law on 11 March 2020, the Parliament adopted the first Authorization Act, which entered into force on 30 March. The Authorization Act **provided the Government with a *carte blanche* mandate without any sunset clause** to suspend the application of Acts of Parliament, derogate from the provisions of Acts, and take other extraordinary measures until the state of danger declared by the Government is in place. This was achieved in two steps. First, the Authorization Act **entitled the Government to override any Act of Parliament**, in basically any area, not just in the areas originally listed by the Disaster Management Act, and so widened the scope of the special decrees the Government could issue during the state of danger excessively. Second, the Authorization Act eliminated the substantive constitutional guarantee that the individual special government decrees may remain in force after an initial period of 15 days only if the Parliament agrees to extend the force of the decrees in question. Instead, the Authorization Act **authorized the Government to extend until the end of the state of danger the force of future, not-yet-adopted special decrees** – the content of which was of course unknown.

	How long are government decrees in force?	What can the Government issue a decree about?
<b>State of danger before the Authorization Act</b>	For 15 days – after that, they remain in force only if the Government receives an authorization from the Parliament to extend their effect.	<ul style="list-style-type: none"> <li>About the issues listed in the Disaster Management Act.</li> </ul>
<b>State of danger under the Authorization Act</b>	Until the termination of the state of danger (regarding which the Government has full discretion).	<ul style="list-style-type: none"> <li>About the issues listed in the Disaster Management Act.</li> <li>In addition, it may suspend the application of any Act of Parliament, derogate from the provisions of Acts and take other extraordinary measures by means of a decree, in order 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.</li> </ul>

Between 30 March 2020 and the end of first state of danger period in June, the **Government issued over 150 decrees**, partly using the powers granted by the Authorization Act. Some of these decrees **violated fundamental rights and EU law**. The first state of danger was terminated by the Government on 18 June 2020, and as a consequence of that, the Authorization Act was repealed by the Parliament, and the special government decrees adopted in the state of danger lost their effect. (These decrees were not “revived” by the second state of danger declared in November 2020, or by the Second Authorization Act.)

**3. The Transitional Act and the state of medical crisis (June 2020)**

On the same day when the Authorization Act was repealed by the Parliament, the so-called Transitional Act came into force. The Transitional Act **fundamentally altered the legal framework regarding the state of danger and the state of medical crisis**, and provided the Government with excessive powers that can be applied with a reference to an epidemic with significantly weakened constitutional safeguards:

- As far as the regulatory framework for the state of danger is concerned, **the first Authorization Act’s stipulation that provided a *carte blanche* mandate to the Government** by excessively widening the scope of the decrees the Government may issue during the state of danger **was copied practically verbatim into the Disaster Management Act**. As a result of the amendment, the Disaster Management Act does not contain any more a closed list of issues regarding which the Government may adopt decrees derogating from Acts of Parliament. The list has now become open ended, so the Government’s authorization to put aside Acts of Parliament is not effectively limited. This provision becomes automatically applicable whenever the Government declares the state of danger.
- The Transitional Act amended the rules of the state of medical crisis, significantly **widening the Government’s possibilities of adopting restrictive decrees and measures under a state of medical crisis**. Unlike the state of danger, the state of medical crisis is not one of the special legal orders provided for by the Fundamental Law, but a regime governed by the Act CLIV of 1997 on Health Care (hereafter: Health Care Act). Similar to a state of danger, it shall be ordered and terminated by the Government. It may initially last for a period of six months, and then may be extended practically indefinitely. **Parliamentary approval is not needed to keep the decrees** adopted under a state of medical crisis **in force**, unlike in the case of the decrees adopted in a state of danger. (See the table below for comparison.) The Government ordered a state of medical crisis on 18 June 2020 for six months.

	How long does it last?	How long are government decrees in force?	What can the Government issue a decree about?
<b>State of danger according to the Transitional Act</b> <i>(Rules in the Fundamental Law and the Disaster Management Act)</i>	It shall be terminated by the Government if the conditions for its declaration no longer prevail.	For 15 days – after that, they remain in force only if the Government receives an authorization from the Parliament to extend their effect.	<ul style="list-style-type: none"> <li>• About the issues listed in the Disaster Management Act.</li> <li>• In addition, it may suspend the application of any Act of Parliament, derogate from the provisions of Acts and take other extraordinary measures by means of a decree, in order 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.</li> </ul>

<p><b>State of medical crisis according to the Transitional Act</b> <i>(Rules in the Health Care Act)</i></p>	<p>Initially for six months, but may be extended indefinitely if the conditions for ordering it still prevail.</p>	<p>Until the end of the state of medical crisis (presumably – there is no clear rule on this).</p>	<ul style="list-style-type: none"> <li>• About the issues listed in Article 232/D (1) of the Health Care Act (as introduced by the Transitional Act).</li> <li>• In addition, the Government may order epidemiological measures that are provided for by an Act of Parliament, and adopt other provisions specified by an Act of Parliament.</li> </ul>
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There are two important **substantive distinctions between the permissible content of the decrees adopted under the framework of a state of danger and a state of medical crisis:**

- Decrees adopted under a state of medical crisis cannot, in principle, suspend the application of or derogate from the provisions of Acts of Parliament;
- Since it is not a “special legal order”, in a state of medical crisis the Government is not allowed to suspend or restrict fundamental rights beyond the extent allowed by the Fundamental Law in ordinary circumstances.

Thus, **the state of danger allows for significantly more interference with fundamental rights, and provides more power to the executive in general.**

It is also important to point out that the Transitional Act transformed many provisions of the emergency government decrees into ordinary statutory norms that are not transitional at all. The over 400 sections of the Transitional Act can be organised into three categories: (i) provisions that are not transitional, i.e. they remain in force unless they are later amended or revoked by the Parliament; (ii) provisions that remain in force for a specifically defined date (e.g. until 30 June 2021); and (iii) provisions that are not transitional (i.e. they remain in force unless amended or revoked by Parliament) but are only applicable during a state of danger or a state of medical crisis.

#### 4. The second state of danger and the Second Authorization Act (since November 2020)

The Government declared a state of danger for the second time on 3 November 2020. By that, **the Disaster Management Act’s new provision that provides a *carte blanche* mandate to the Government in a state of danger became automatically applicable** (as a result of the Transitional Act, explained above).

However, the Fundamental Law’s substantive restriction that special government decrees may stay in effect beyond 15 days only with the Parliament’s approval remained. This was overcome by adopting the Second Authorization Act, which removed this constitutional limitation once again, and **authorized the Government to extend the force of future, not-yet-adopted special decrees**. However, the Second Authorization Act differs from the original Authorization Act in that it **does contain a sunset clause**: it authorizes the Government to extend the force of its decrees adopted during the state of danger for 90 days from its promulgation, that is, until 8 February 2021. Therefore, if the Government wishes to prolong the effect of its emergency decrees it will need another authorization from the Parliament. The fact that the Government is the only actor that can terminate the state of danger remains intact, as that is set out in the Fundamental Law.

#### 5. Operation of other branches of power

**Neither of the authorization acts suspended the operations of the Parliament or the courts.** In fact, the Hungarian Parliament not only remained operational during the respective states of danger, but has been quite active, and adopted a number of Acts and decisions during both states of danger – even an [amendment to the Fundamental Law](#). Some of the laws had no relationship whatsoever with the containment of COVID-19, but in turn had a [negative effect](#) on human rights and the rule of law.

## 6. Constitutional oversight

It is problematic that **neither the authorization acts, nor the Transitional Act include any provisions that would facilitate the swift and effective constitutional review of government decrees** adopted in a state of danger or in a state of medical crisis (such as a provision prescribing a short deadline for the Constitutional Court to decide on complaints regarding emergency decrees). As a result, the Constitutional Court refused to decide on the constitutionality of three emergency decrees that had been challenged before it on the basis that by the time it got down to adjudicating the constitutional complaints, the decrees were not in force any more.

Furthermore, the fact that currently there is both a state of danger and a state of medical crisis in effect in Hungary may also complicate constitutional oversight. There is an overlap between the Government's regulatory powers flowing from the state of danger and the state of medical crisis, and experts claim the Government does not seem to be entirely consequent when determining the basis for issuing the emergency decrees, i.e. whether a government decree was issued on the basis of the state of danger or the state of medical crisis. This may easily lead to **uncertainty when it comes to the applicable constitutional standards** for reviewing the specific government decrees, undermining the effectiveness of constitutional oversight.

Further information:

[Background note by the Hungarian Helsinki Committee on the Authorization Act](#) (31 March 2020)

[Explanatory note by the Hungarian Helsinki Committee on the Transitional Act](#) (17 June 2020)