

The (too?) complex regulation of emergency powers in Hungary

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1. Regulation of the special legal order system

1.1. Constitutional and legal background

Unlike a number of former communist states, Hungary, for various reasons, decided not to adopt a new constitution during the democratic transition in 1989–1990 or the first parliamentary term. Instead of drafting an entirely new constitution, the old communist *Constitution of 1949* (hereinafter Constitution) was *formally* retained, although it was completely amended in 1989 and 1990. Taking into account the extensiveness of the amendments (almost every single provision of the Constitution had been replaced), it is no exaggeration to say that materially, a new constitution was born during the transition. One of the most remarkable changes was the introduction of detailed, albeit dispersed, provisions on the special legal order (SLO) system; before the transition, the Constitution included only some vague provisions regarding war and other dangers seriously threatening the security of the state. Under the amendments of 1989, three categories of SLO were set up:

- *state of national crisis* in the event of war or danger of war;
- *state of emergency* in the event of armed actions aimed at overturning constitutional order or at the acquisition of exclusive control of public power; and
- *state of danger* in the event of natural disasters that endanger the lives and property of citizens

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(However, it must be noted that the Constitution itself did not use the term 'special legal order', which means there was no comprehensive legal term for such situations, although the literature referred to them as 'qualified situations'. For the sake of simplicity, we use the term SLO throughout this manuscript.)

A few years later, the Constitution was completed with a new fourth SLO, which may be described as the '*unexpected attack*' category, although neither the Constitution nor other laws used this term. According to the explanatory memorandum of the 1993 constitutional amendment, the Constitution had no provision regarding the actions to be taken in the event of an unexpected incursion of external armed units (e.g. guerrilla groups) into Hungarian territory or intentional violation of the country's airspace.¹ The aim of this amendment was to fill this gap so as to avoid the declaration of other, more serious SLOs (i.e. a state of national crisis).

In 2004, another new SLO to introduce a *state of preventive defence* was incorporated into the Constitution. Lawmakers justified the addition, citing the inadequacy of the Constitution in terms of handling security threats not reaching the level of a state of national crisis.

The Constitution was replaced by the *Fundamental Law* (FL), which was adopted in 2011 and entered into force on 1 January 2012.² The FL re-regulated the system of SLO and introduced the term 'special legal order', which is a comprehensive term currently embracing no less than six (only five at the time of the adoption of the FL) different emergency situations. Contrary to several European constitutions, the FL belongs to the type that devotes a separate part to emergency powers. It is a telling fact that excluding the National Avowal (which serves as the preamble of the FL) and the Closing and Miscellaneous Provisions, the FL consists of four parts,³ one of which is dedicated to SLOs. Bjørnskov and Voigt defined an emergency constitution as '*the set of formal legal provisions encoded in the constitution that specify who can declare an emergency, under which conditions an emergency can be declared, who needs to approve the declaration, and which actors have which special powers once it has been declared [...]*'.⁴ From this point of view, it is striking how perfectly the SLO part of the FL fits into this definition, acting as a 'constitution within the constitution'.

As Horváth has pointed out, the SLO part of the FL has at least three unique features that distinguish it from the constitutions of other EU member states.⁵ First, the FL distinguishes between no less than six types of SLOs, which is presumably a 'world record'. Second, the SLO

1 To highlight the context of the amendment, it must be noted that during the Yugoslav Wars in the early 1990s, armed groups and fighter aircrafts occasionally violated the territory of Hungary (Keszely, 2017, p. 84.).

2 The Hungarian term *Alaptörvény* may be translated either as *Fundamental Law* or *Basic Law*.

3 These are *Foundation* (basic provisions), *Freedom and Responsibility* (fundamental rights and obligations), *The State* (provisions on the basic organs of the state) and *Special Legal Order*.

4 Bjørnskov and Voigt, 2018, p. 103.

5 Horváth, 2021, pp. 640–641.

part of the FL is unusually lengthy and currently consists of almost 11,000 characters, which is more than 10% of the whole text. Third, even the term ‘special legal order’ (*különleges jogrend*) is worth a deeper look. Although the official translation of the FL uses this term, the phrase ‘special legal regime’ would be even more expressive, implying that once an SLO has been declared, the state ‘leaves the traditional democratic framework’,⁶ while the constitutional constraints become more relaxed and fundamental changes take place in the functioning of the state (allocation of powers and competencies, range of potential measures, etc.). However, SLO should not be considered as a dictatorship, as it provides only a temporary authorisation for the ‘crisis manager’ to overcome a certain type of crisis. Apart from the FL, there are only a few constitutions that include a comprehensive legal term connoting a ‘special legal order’.⁷

Although the FL includes a number of provisions on SLO, more detailed regulation can be found at the sub-constitutional level. Two laws deserve special attention in this regard: the Act on National Defence⁸ (NDA) and the Act on Disaster Management (DMA).⁹ The former devotes a whole chapter (IX) to the extraordinary measures that may be introduced in the event of a state of national crisis, state of emergency, state of preventive defence, state of terrorist threat, or unexpected attack. The DMA lists natural disasters or industrial accidents that may trigger the declaration of a state of danger, and also includes the extraordinary measures that the Government can resort to in order to overcome the danger (Chapter V). According to the FL, both these laws qualify as the so-called ‘cardinal acts’.¹⁰

1.2. The six types of special legal order

As mentioned previously, the FL regulates six different types of SLOs. In this section, we present the relevant provisions of the FL and briefly evaluate and compare them.

a) State of national crisis (*rendkívüli állapot*)¹¹

A state of national crisis is unequivocally the most serious form of SLO, which allows the widest range of deviation from the normal legal order.

⁶ Gerencsér, 2015, p. 307.

⁷ As the chapter on Poland of the current book notes, the Polish Constitution uses the term *stan nadzwyczajne* (*extraordinary states*), which is the overall label of various SLOs.

⁸ Act CXIII of 2011 on National Defence and the Hungarian Defence Forces, and on Measures to be Introduced in the Special Legal Order

⁹ Act CXXVIII of 2011 on Disaster Management and Amending Certain Related Acts

¹⁰ According to FL Article T) para. (4), ‘Cardinal Acts shall be Acts, the adoption and amendment of which requires the votes of two thirds of the Members of the National Assembly present’.

¹¹ Although the official English translation of the FL uses the term *state of national crisis*, the literal translation for the Hungarian term *rendkívüli állapot* is *extraordinary state*.

*Article 48¹²**(1) The National Assembly:¹³*

a) shall declare a state of national crisis and set up a National Defence Council in the event of the declaration of a state of war or an imminent danger of armed attack by a foreign power (danger of war);

[...]

(2) For a state of war to be declared, peace to be concluded or to declare the special legal order referred to in paragraph (1) [i.e. state of national crisis and state of emergency], the votes of two thirds of the Members of the National Assembly shall be required.

(3) If the National Assembly is prevented from making such decisions, the President of the Republic shall have the right to declare a state of war, to declare a state of national crisis and set up the National Defence Council, or to declare a state of emergency.

(4) The National Assembly shall be deemed to be prevented from making such decisions if it is not in session and convening it is made impossible by insurmountable obstacles caused by shortage of time or the events resulting in a state of war, a state of national crisis or state of emergency.

(5) The Speaker of the National Assembly, the President of the Constitutional Court and the Prime Minister shall unanimously decide whether the National Assembly is prevented from acting and the declaration of a state of war, state of national crisis or state of emergency is justified.

(6) As soon as the National Assembly is no longer prevented from acting, it shall at its first sitting review whether the declaration of a state of war, state of national crisis or state of emergency was justified, and decide on the legality of the measures adopted. For such decisions, the votes of two-thirds of the Members of the National Assembly shall be required.

As can be seen, a state of national crisis shall be declared, as a general rule, by the Parliament. However, under certain circumstances, the Parliament may be unable to make a proper decision, wherein the President of the Republic shall have the right to declare a state of national crisis. To avoid the abusive circumvention of the Parliament, the FL stipulates a number of guarantees regarding the declaration of a state of national crisis. On the one hand, the FL clearly specifies when the Parliament shall be deemed incapable of making a proper decision. On the other hand, the Speaker of the National Assembly, the President of

¹² The title of FL Article 48 reads as follows: 'Common rules for the state of national crisis and the state of emergency'. Thus, this article includes provisions that are valid for both these SLOs.

¹³ The official name of the Hungarian Parliament is *Országgyűlés*, which may be translated as *National Assembly*. We use the term 'Parliament' and 'National Assembly' interchangeably.

the Constitutional Court, and the Prime Minister shall unanimously decide on the issue of the Parliament's incapability. Even if one of these three persons disagree on whether the Parliament is incapable of making a decision or the declaration of a state of national crisis is justified, the President of the Republic shall have no right to declare this SLO. Finally, it is worth mentioning that if a state of national crisis is declared by the President of the Republic, the Parliament, at its first sitting, would review the justification of the declaration and decide on the legality of the measures adopted.

The extraordinary nature of a state of national crisis is reflected even in the set-up of the National Defence Council (NDC), which is a unique body entrusted with a wide range of powers to enable it to overcome a national crisis.

Article 49

(1) The President of the National Defence Council shall be the President of the Republic, and its members shall be the Speaker of the National Assembly, the leaders of parliamentary groups, the Prime Minister, the ministers and – in a consultative capacity – the Chief of the Defence Staff.

(2) The National Defence Council shall exercise:

- a) the powers delegated to it by the National Assembly,*
- b) the powers of the President of the Republic,*
- c) the powers of the Government.*

(3) The National Defence Council shall decide:

- a) on the deployment of the Hungarian Defence Forces abroad or within Hungary, on their participation in peacekeeping, on their humanitarian activity in a foreign operational area, or on stationing them abroad,*
- b) on the deployment of foreign armed forces in Hungary or departing from the territory of Hungary, or on stationing them in Hungary,*
- c) on the introduction of extraordinary measures laid down in a cardinal Act.*

(4) The National Defence Council may adopt decrees by means of which it may, as provided for by a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

(5) Upon the termination of the state of national crisis, such decrees of the National Defence Council shall cease to have effect, unless the National Assembly extends those decrees.

The unusual character of the NDC is reflected in its composition that includes the head of the state, the members of the Government, and some representatives of the Parliament. As Jakab and Till note, the lack of voting rights in the case of the Chief of the Defence Staff may be justified by the principle of civil control: the Hungarian Defence

Forces shall be under civilian control both in peace and war.¹⁴ The other special feature lies in its competencies as the NDC apparently does not conform to the principle of separation of powers since it possesses executive and certain legislative powers at the same time.¹⁵

The extraordinary measures mentioned in Article 49 are regulated by the NDA. The NDC may take special measures regarding defence administration (e.g. modifying the regulation of military service), public administration (e.g. modifying and extending the competencies of certain authorities), public order (e.g. limiting or suspending postal and electronic communication services), public safety (e.g. restricting traffic and citizen movements), judicial system (e.g. modifying the regulations on criminal procedure or civil procedure, setting up new courts and public prosecutor's offices), and economic and material service obligations (e.g. restricting foreign trade, ordering the performance of work for national defence purposes). It is also noteworthy that during a state of national crisis, adult male Hungarian citizens with domicile in Hungary are obliged to perform military service.¹⁶

b) State of emergency (*szükségállapot*)

While a state of national crisis may be declared in the event of war or an imminent danger of war, a state of emergency may be triggered by domestic conflicts.

Article 48

(1) The National Assembly:

[...]

b) shall declare a state of emergency in the event of armed actions aimed at subverting the lawful order or at exclusively acquiring power, and in the event of serious acts of violence massively endangering life and property, committed with weapons or with instruments capable of causing death.

According to this definition, a state of emergency may be declared under circumstances such as riots, rebellion coups d'état, and civil war. It must be emphasised that the wording of the FL uses expressions in plural (armed actions, serious acts of violence), which means that a single event (e.g. an assassination) may not serve as the basis for declaring a state of emergency.

¹⁴ Jakab and Till, 2020, p. 446.

¹⁵ Cf. Farkas and Kádár, 2016, p. 306; Petrétei, 2015, pp. 34–44.

¹⁶ FL Article XXXI para. (3)

Article 50

(1) The Hungarian Defence Forces may be deployed during a state of emergency if the use of the police and the national security services proves insufficient.

(2) During a state of emergency, if the National Assembly is prevented from acting, the President of the Republic shall decide on the utilisation of the Hungarian Defence Forces under paragraph (1).

(3) During a state of emergency, the extraordinary measures laid down in a cardinal Act shall be introduced by the President of the Republic in a decree. By means of his or her decree, the President of the Republic may, as provided for by a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

(4) The President of the Republic shall inform the Speaker of the National Assembly without delay of the extraordinary measures introduced. During a state of emergency, the National Assembly, or, if it is prevented from acting, the committee of the National Assembly dealing with national defence issues shall remain continuously in session. The National Assembly or, if it is prevented from acting, the committee of the National Assembly dealing with national defence issues may suspend the application of the extraordinary measures introduced by the President of the Republic.

(5) Extraordinary measures introduced by means of decrees shall remain in force for thirty days, unless the National Assembly or, if it is prevented from acting, the committee of the National Assembly dealing with national defence issues extends them.

(6) Upon the termination of the state of emergency, such decrees of the President of the Republic shall cease to have effect.

It must be noted again that a state of national crisis and a state of emergency have some common rules (see Article 48 of FL quoted above). Thus, our previous comments on this article are applicable even for a state of emergency.

While the NDC becomes the ‘power centre’ in the case of a state of national crisis, the President of the Republic acts as the ‘crisis manager’ in a state of emergency. Contrary to the normal legal order, the SLO empowers the President with legislative authority to adopt decrees through which they may introduce extraordinary measures laid down in the NDA. The scope of these possible extraordinary measures is somewhat narrower than that of the measures allowed in a state of national crisis, although the overlap is still significant.

Since no state of emergency has been declared so far, Hungary does not have any experience with this SLO. However, it seems to be a rather unusual arrangement for the President of the Republic, who possesses merely symbolic and representative power and is not involved in daily politics under normal circumstances, to be empowered with direct decision-making authority. As we outline later, the Ninth Amendment of the FL abolished this ‘crisis manager’ role of the President.

c) State of preventive defence (*megelőző védelmi helyzet*)

A state of preventive defence is considered to be a precursor to a state of national crisis.¹⁷

Article 51

(1) In the event of a danger of external armed attack or in order to meet an obligation arising from an alliance, the National Assembly shall declare a state of preventive defence for a fixed period of time, and shall simultaneously authorise the Government to introduce extraordinary measures laid down in a cardinal Act. The period of the state of preventive defence may be extended.

(2) The votes of two-thirds of the Members of the National Assembly present shall be required for the special legal order referred to in paragraph (1) to be declared or to be extended.

(3) After initiating the declaration of a state of preventive defence, the Government may, by means of decrees, introduce measures derogating from the Acts affecting the operation of public administration, the Hungarian Defence Forces and law enforcement organs, and shall continuously inform the President of the Republic and the standing committees of the National Assembly vested with its relevant functions and powers. The measures thus introduced shall remain in force until the decision of the National Assembly on the declaration of a state of preventive defence but for no longer than sixty days.

(4) During a state of preventive defence, the Government may adopt decrees by means of which it may, as provided for by a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

(5) Upon the termination of the state of preventive defence, such decrees of the Government shall cease to have effect.

Contrary to a state of national crisis, this SLO may be declared even if the danger of an external armed attack is not imminent. Another distinction lies in the nature of the danger of the attack: while a state of national crisis is related to an imminent danger of armed attack by a *foreign power* (i.e. foreign state), a state of preventive defence may be declared even in the event of a threat by a formal international organisation or an informal organisation (e.g. a terrorist organisation).¹⁸

The scope of these possible extraordinary measures is somewhat narrower than that of measures allowed in a state of national crisis. During a state of preventive defence, the National Assembly may require adult male Hungarian citizens with domicile in Hungary to perform military service.¹⁹

¹⁷ Farkas, 2020, p. 368.

¹⁸ Jakab and Till, 2020, p. 453.

¹⁹ FL Article XXXI para. (3)

d) State of terrorist threat (*terrorveszélyhelyzet*)

The state of terrorist threat was the only SLO that was not enacted in the original text of the FL. The Parliament incorporated this SLO through the Sixth Amendment of the FL in 2016. According to the explanatory memorandum of the amendment, lawmakers cited new types of security challenges that could not be dealt with effectively by the existing SLOs. Politicians and even scholars were divided over whether it was essential to raise the terrorism threat to a constitutional rank. The Government was clearly in favour of enacting the new SLO, arguing that none of the five existing SLOs were suitable for coping with a terrorist threat or attack.²⁰ In contrast, the larger part of the opposition voted against enacting the state of terrorist threat SLO, claiming that the current legal framework was adequate in terms of guaranteeing the safety of citizens; therefore, a new SLO was unnecessary.²¹ Some scholars argue that a terrorist attack could have been brought within the scope of either the current form of a state of emergency²² or a slightly revised form of a state of emergency.²³

As for the regulation of a state of terrorist threat, the FL reads as follows:

Article 51/A

(1) In the event of a significant and direct threat of a terrorist attack or in the event of a terrorist attack, the National Assembly shall, at the initiative of the Government, declare a state of terrorist threat for a fixed period of time, and shall simultaneously authorise the Government to introduce extraordinary measures laid down in a cardinal Act.

(2) The votes of two-thirds of the Members of the National Assembly present shall be required for the special legal order referred to in paragraph (1) to be declared or to be extended.

(3) After initiating the declaration of a state of terrorist threat, the Government may, by means of decrees, introduce measures derogating from the Acts concerning the organisation, the operation and the performance of activities of public administration, the Hungarian Defence Forces, the law enforcement organs and the national security services, as well as those laid down in a cardinal Act, and shall continuously inform the President of the Republic and the standing committees of the National Assembly vested with its relevant functions and powers.

²⁰ Simicskó, 2016, pp. 105–106. As the author points out, there are a number of arguments against dealing with the threat of a terrorist attack or an actual terrorist attack by introducing a state of emergency. Inter alia, he claims that the wording for a state of emergency ('armed actions' [in plural], 'serious acts of violence massively endangering life and property' [in plural as well]) presumes more than one action. He also takes the view that a state of emergency is not suitable for the pursuit of immediate actions.

²¹ For details on the reasoning at the parliamentary debates see Till, 2020, pp. 24–35.

²² Mészáros, 2017a, pp. 128–129. The author argues elsewhere (2017b) that enacting the SLO state of terrorist threat neither serves the principle of the rule of law nor offers better protection against terrorism.

²³ Ósze, 2018, pp. 40–41.

The measures thus introduced shall remain in force until the decision of the National Assembly on the declaration of a state of terrorist threat but for no longer than fifteen days.

(4) During a state of terrorist threat, the Government may adopt decrees by means of which it may, as provided for by a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

(5) The Hungarian Defence Forces may be deployed while the measures referred to in paragraph (3) are in force and during a state of terrorist threat if the use of the police and the national security services proves insufficient.

(6) Upon the termination of the state of terrorist threat, such decrees of the Government shall cease to have effect.

As can be seen, this SLO may be triggered even for a (significant and direct) threat of a terrorist attack, which raises concerns among some experts, who claim that the article is somewhat vague compared to the provisions in the other types of SLO. As Drinóczi notes, there is no efficient oversight of special decrees issued by the Government in the period between the initiation of the declaration of a state of terrorist threat by Parliament and its actual introduction.²⁴ After reviewing several European constitutions, Ságvári pointed out that tailoring the SLO to terrorism is not in line with European practice.²⁵

e) Unexpected attack (*váratlan támadás*)

As mentioned earlier, the Constitution regulated this SLO, but did not include the term ‘unexpected attack’. (According to some viewpoints, unexpected attack as such shall not exist, only insufficient intelligence or assessment.²⁶) In contrast, the FL expressly uses this term. The current regulation is as follows:

Article 52

(1) In the event of an unexpected incursion of external armed groups into the territory of Hungary, until the decision on the declaration of a state of emergency or state of national crisis, the Government shall be obliged – if necessary, in accordance with the armed defence plan approved by the President of the Republic – to take immediate action using force proportionate to and prepared for the attack, to repel the attack, to defend the territory of Hungary with domestic and allied readiness forces of the air defence and air forces, in order to protect lawful order, life and property, public order and public safety.

²⁴ Drinóczi, 2020, p. 15.

²⁵ Ságvári, 2016

²⁶ Till, 2019, [25]

(2) The Government shall forthwith inform the National Assembly and the President of the Republic of its action taken under paragraph (1).

(3) In the event of an unexpected attack, the Government may introduce extraordinary measures laid down in a cardinal Act, and may adopt decrees by means of which it may, as provided for by a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

(4) Upon the termination of the unexpected attack, such decrees of the Government shall cease to have effect.

In order to distinguish an unexpected attack from a state of national crisis, it must be emphasised that the latter may be declared if the attacker is identified and is a foreign state. In the absence of either condition, an unexpected attack may be the only possible solution.²⁷ In light of the expression ‘until the decision on the declaration of a state of emergency or state of national crisis’, an unexpected attack is an expressly temporary SLO, whose rationale is to treat armed incursions beneath the threshold of war.²⁸

Unexpected attack is a unique SLO in terms of its activation since there is no formal provision on declaration, contrary to the other five SLOs. Instead of a declaration, the Government is obliged to take immediate actions, as demonstrated above.

f) State of danger (*veszélyhelyzet*)

Unlike the former SLOs, a state of danger is related to natural disasters or industrial accidents and is considered to be the most moderate SLO.

Article 53

(1) In the event of a natural disaster or industrial accident endangering life and property, or in order to mitigate its consequences, the Government shall declare a state of danger, and may introduce extraordinary measures laid down in a cardinal Act.

(2) In a state of danger, the Government may adopt decrees by means of which it may, as provided for by a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

(3) The decrees of the Government referred to in paragraph (2) shall remain in force for fifteen days, unless the Government, on the basis of authorisation by the National Assembly, extends those decrees.

²⁷ Jakab and Till, 2020, p. 445.

²⁸ Till, 2019, [28]

(4) Upon the termination of the state of danger, such decrees of the Government shall cease to have effect.

State of danger is the only SLO that may be declared by the Government and for which detailed regulation is enacted in the DMA (not in the NDA). Compared to the NDA, the DMA allows a narrower range of extraordinary measures. As for the duration of a state of danger, the current regulation makes a distinction between the real duration of the state of danger on the one hand and the force of the decrees of the Government on the other. While there is no provision on the duration of the state of danger, the government decrees (adopted in regard to the state of danger) shall remain in force for 15 days (unless extended on the basis of authorisation by the Parliament). The latter provision ensures parliamentary oversight of the extraordinary measures introduced by the Government.

The following table summarizes the differences between the six types of SLOs.

	Under what circumstances?	Who declares?	Who is entitled to take emergency measures?
State of national crisis	– in the event of declaration of a state of war – or an imminent danger of armed attack by a foreign power (danger of war)	– Parliament (with the votes of two-thirds of MPs)	National Defence Council
State of emergency	– armed actions aimed at subverting the lawful order or at exclusively acquiring power – serious acts of violence massively endangering life and property	– President of the Republic if the Parliament is prevented from making such decisions	President of the Republic
State of preventive defence	– danger of external armed attack – fulfil an obligation arising from an alliance	Parliament (with the votes of two-thirds of MPs present)	Government
State of terrorist threat	– a significant and direct threat of a terrorist attack – in the event of a terrorist attack		
Unexpected attack	– unexpected incursion of external armed groups into the territory of Hungary	(no declaration – the Government is obliged to take immediate actions)	
State of danger	– natural disaster or industrial accident endangering life and property	Government	

Table 6
Special legal orders in Hungary
Source: Authors' compilation

1.3. Quasi-SLOs

Although the FL regulates no fewer than six types of SLO, the Hungarian legal system includes a number of other crisis situations that do not qualify for SLO, although their basic goal is to overcome a certain type of crisis through special provisions. Among what we call quasi-SLOs, the so-called crisis situation caused by mass immigration is unambiguously the one that requires a deeper look since it has triggered a host of legal concerns among both domestic scholars and international organisations. It must be emphasised that this crisis situation is not covered by the FL; thus, it does not qualify as a 'real' SLO. Instead, the topic was inserted into the Act on Asylum in 2015.²⁹ A crisis situation may be declared (for the entire territory or defined areas of Hungary) by the Government based on a ministerial recommendation made at the behest of the National Commander of the Police and the head of the refugee authority.³⁰ As the explanatory memorandum of the law claims, '[t]he Government is unable to give a proper response to the mass immigration of foreigners – or only with a significant delay – in the current Hungarian legal framework. It is therefore appropriate to introduce the concept of a "crisis caused by mass immigration"'. The memorandum further notes that '[t]he declaration of this crisis situation entails a departure from the general rules of the legal system'. Once a crisis due to mass immigration is declared, special (more rigorous) rules apply to third-country citizens irregularly entering and/or staying in Hungary as well as to asylum seekers.

Criticism on the crisis situation is two-fold. Some argue that '[t]his "crisis situation" should not permit the uncontrolled exercise of some powers and even more severe human rights restrictions that are allowed in constitutional emergencies. Nevertheless, it still does, regardless of some corrections'.³¹ According to other evaluations, regulation of mass immigration may be compared to a militant democracy, since extraordinary provisions are enacted in the normal legal order, while aiming to maintain the formal framework of the principle of rule of law.³² Meanwhile, the duration of the crisis situation caused by mass immigration has been very controversial. The Government declared a crisis situation in September 2015

²⁹ Act LXXX of 2007 on Asylum, Chapter IX/A. According to 80/A. §, a crisis situation caused by mass immigration can be declared, *for example*, if the number of those arriving in Hungary and seeking recognition exceeds

a) 500 people a day as a month's average, or
b) 750 people per day as the average of two subsequent weeks, or
c) 800 people per day as a week's average

³⁰ Act LXXX of 2007 on Asylum, 80/A. § para (2)

³¹ Drincózi, 2020, p. 10.

³² Mészáros, 2019a

and renewed it every six months regardless of the actual migration situation. Thus, the crisis situation had somewhat perpetuated for more than five years.

Among international critics, Felipe González Morales, the Special Rapporteur on the human rights of migrants (UN Human Rights Council), argued that the Hungarian Government's declaration of a migrant 'crisis' does not correspond to reality and has led to human rights violations.³³ The UN High Commissioner for Refugees³⁴ and the Commissioner for Human Rights (Council of Europe) also expressed concerns about Hungary's measures affecting access to asylum.³⁵

In addition to the crisis caused by mass immigration, the military crisis situation is also a kind of quasi-SLO. It is a state of domestic military alertness and may be declared by the Government on the recommendation of the Minister of Defence in order to (1) prepare for the impact of disturbances evolving in neighbouring countries, which directly threatens the security of Hungary, or (2) prepare for the fulfilment of the obligations related to Articles 4 and 5 of the North Atlantic Treaty.³⁶ This concept was enacted in 2018 in response to the Russo-Ukrainian War.³⁷ Once a military crisis situation is declared, the Government may, among other actions, call for increasing military preparedness or strengthening the control of state borders.

Lastly, the state of medical crisis is also of significant importance, especially in light of the COVID-19 pandemic. The state of medical crisis is enacted in the Health Care Act³⁸ (HCA), and its main rationale (as explained in Section 4) is to stipulate special provisions for certain health care emergency situations.

1.4. New constitutional and legal framework from 2023

In December 2020, the Parliament passed the Ninth Amendment of the Fundamental Law, which significantly amended the regulation of the SLO system.³⁹ (However, these new provisions will enter into force much later, on 1 July 2023.) The most spectacular change concerns the number of types of SLO, with the current six types to be reduced to three: state of

³³ OHCHR, 2019

³⁴ UNHCR, 2021

³⁵ CoE, 2019

³⁶ NDA 21/A. §

³⁷ Jakab and Till, 2020, p. 1043.

³⁸ Act CLIV of 1997 on Health Care, Chapter XIV

³⁹ Although one would presume that the re-regulation of the SLO was provoked by the COVID-19 pandemic, this premise does not represent reality. The idea of comprehensive reform of the SLO emerged well before the pandemic in Hungary.

war, state of emergency, and state of danger. The provision on state of war (*hadiállapot*) reads as follows:

In the event of
a) declaration of war situation or a danger of war,
b) external armed attack, an act with an impact equivalent to an external armed attack, or an imminent danger of either of them, or
c) the performance of collective defence obligation arising from an alliance,
*the National Assembly may declare a state of war.*⁴⁰

As is evident from the provision, the new definition of state of war ‘incorporates’ the current state of national crisis, state of preventive defence, and unexpected attack. It is noteworthy that the new provision includes the expression ‘*an act with an impact equivalent to an external armed attack*’. As the explanatory memorandum stresses, this may include even a serious cyber attack, which, from the aspect of the sovereignty of the state, may be considered to be on par with an armed attack.

The definition of a state of emergency underwent minor changes:

In the event of
a) an act aimed at overthrowing or subverting the constitutional order or at exclusively acquiring power, or
b) a serious unlawful act massively endangering life and property,
*the National Assembly may declare a state of emergency.*⁴¹

As it can be seen, the terms ‘armed’, ‘violence’, and ‘weapons’ have been omitted from the text. Thus, the preconditions for the declaration of a state of emergency have become less rigid.

The new provision on the state of danger reads as follows:

*In the event of 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 may declare a state of danger.*⁴²

⁴⁰ FL Article 51 para. (1) (enters into force on 1 July 2023)

⁴¹ FL Article 50 para. (1) (enters into force on 1 July 2023)

⁴² FL Article 51 para. (1) (enters into force on 1 July 2023)

The newly inserted term ‘in particular’ makes it clear that beyond natural disasters and industrial accidents, other events may also trigger the declaration of a state of danger. Contrary to the current regulation, the new one stipulates the duration, that is, a state of danger may be declared for 30 days.⁴³ On the basis of authorisation by the National Assembly, the Government may extend a state of danger.⁴⁴

The amendment also affects the competencies of the Government, stipulating that ‘[d]uring the period of [the] special legal order, the Government may adopt decrees by means of which it may, as provided for in a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures’.⁴⁵ This would mean that the Government acts as the ‘crisis manager’ regardless of which SLO is declared. This implies that the NDC ceases to exist, and the central role of the President of the Republic in the state of emergency is cancelled. As the explanatory memorandum notes, once an SLO has been declared, it is necessary to provide quick, operative, and responsible decision-making in both the political and legal sense for which the Government appears to be suitable. In order to ensure parliamentary oversight, the amendment lays down that ‘[t]he National Assembly may repeal a decree adopted by the Government during the period of, and in accordance with the rules related to [the] special legal order’.⁴⁶

The comprehensive reform of the SLO affects the relevant laws, mainly the NDA and the DMA. At the time of completion of this manuscript, the National Assembly had passed a new law,⁴⁷ which aims to bring a new and more complex approach regarding defence and security policy. From the aspect of the current book, one of the most significant changes concerns the extraordinary measures that may be taken by the Government once an SLO has been declared. Contrary to the current regulation, the new law does not stipulate an itemised list of extraordinary measures. Instead, the law provides a general authorisation for the Government, enabling it to take any extraordinary measures to ensure that the life, health, person, property, and rights of the citizens are protected, and to guarantee the stability of the national economy.⁴⁸ This new approach obviously gives more leeway to the Government, while imposing more responsibility as well.

43 FL Article 51 para. (2) (enters into force on 1 July 2023)

44 FL Article 51 para. (3) (enters into force on 1 July 2023)

45 FL Article 53 para. (1) (enters into force on 1 July 2023)

46 FL Article 53 para. (3) (enters into force on 1 July 2023)

47 Act XCIII of 2021 on the Coordination of Defence and Security Activities (HDSA) (enters into force on 1 July 2023)

48 HDSA 80. §

2. Restrictions on fundamental rights

Concerning restrictions on fundamental rights, the FL lays down the so-called general necessity-proportionality test, which defines the substantive and formal criteria for imposing constraints on fundamental rights. The provision reads as follows: ‘A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right’.⁴⁹ As Gárdos-Orosz concludes, the constitutional rules on restricting fundamental rights and resolving any conflict of fundamental rights are generally in line with the general principles of international law and the theory of law.⁵⁰

Once any type of SLO has been declared, a special provision shall govern the constraints on fundamental rights. According to the part on SLO in the FL, ‘[u]nder a special legal order, the exercise of fundamental rights – with the exception of the fundamental rights provided for in Articles II and III, and Article XXVIII (2) to (6) – may be suspended or may be restricted beyond the extent specified in Article I (3)’.⁵¹ The exceptions are the following:⁵²

- right to life and human dignity (including the prohibition of torture, inhuman, or degrading treatment or punishment)
- certain criminal law-related fundamental rights: presumption of innocence, right of defence in criminal proceedings, principle of *nullum crimen/nulla poena sine lege* and principle of *ne bis in idem*

As discussed earlier, both the NDA and the DMA allow the ‘crisis manager’ (i. e. the person or body who is authorised to take extraordinary measures – the NDC, the President, or the Government) to introduce extraordinary measures that may seriously affect a wide range of fundamental laws (e.g. restrictions on free movement, right of assembly, freedom of expression). However, such restrictions may be justified by the special provision quoted above. Although the special provision of Article 54 para. (1) may seem to be somewhat limitless since it has no formal criteria regarding the extension of the restriction, one should bear in mind that, according to the FL, protection of fundamental rights shall be the primary obligation of

49 FL Article I para. (3)

50 Gárdos-Orosz, 2020, [39]

51 FL Article 54 para. (1)

52 As Gerencsér notes, the FL allows less exceptionality in restriction of fundamental rights than the 1989 Constitution did (Gerencsér, 2015, pp. 319–320.). For example, the latter did not allow the restriction of freedom of movement or freedom of religion, both of which may be quite reasonable in certain emergency situations.

the state.⁵³ Since Hungary has had little experience with SLO, apart from its handling of the COVID-19 pandemic, there is a gap in case law from either the Constitutional Court or other courts.

3. SLO in practice

Fortunately, Hungary has had little experience with SLOs before COVID-19. In the past three decades, the state of danger has been the only SLO to have ever been introduced. This type of SLO has been declared 15 times due to flooding and/or inland water overflow (the last time in 2013) and one time due to the so-called Kolontár red sludge disaster, a serious industrial accident that occurred in 2010.⁵⁴ The states of danger related to flooding and/or inland water overflow usually lasted for one or two weeks and had a limited geographic scope (one or more counties or certain sectors of the river bank). The state of danger declared because of the red sludge disaster lasted for almost nine months.

In each case, the rationale for the introduction of the state of danger was to increase the power of the disaster management authorities to overcome the disaster. On the one hand, the government decrees issued with respect to the state of danger provided a legal base to modify and expand the competencies of the authorities and to involve the Hungarian Defence Forces in disaster recovery. On the other hand, the state of danger allowed the authorities to implement extraordinary measures regulated by the DMA, such as restricting traffic and citizen movements, banning events and assemblies in public spaces, and implementing temporary relocation of residents. In the case of the red sludge disaster, the state of danger also entitled the Government to place the concerned company liable for the accident under state control and to appoint a commissioner to manage the company. It must be pointed out that these measures had no legal ground under the 'normal' legal order; it was the SLO that constructed this legal base.

Although the state of danger is the only SLO that has ever been introduced in Hungary, the possibility of declaration of state of emergency has also emerged in some cases, albeit just

⁵³ FL Article I para. (1)

⁵⁴ The disaster, which is considered to be one of the greatest ecological catastrophies of Hungary, took place at an alumina plant in western Hungary. On 4 October 2010, the northwestern corner of the dam of reservoir number 10 collapsed. As a result of the breach, one million cubic metres of red sludge flooded the surrounding territory, including the lower sections of the village of Kolontár and the town of Devecser. Ten people died, and 150 people were injured.

theoretically, and not in a serious form.⁵⁵ While the flooding and/or inland water overflow crises were obvious cases in that there was no question that a state of danger was the only SLO that could have been declared, the red sludge disaster was slightly different in this regard. The then in-force Constitution enabled the Parliament to declare a state of emergency (beyond serious internal crises) even in the event of a natural or industrial disaster that posed great danger to the lives and property of citizens on a mass scale.⁵⁶ The regulation on the state of danger in the Constitution was as follows: 'The Government shall take the measures necessary to limit and alleviate the consequences of natural disasters that endanger the lives and property of citizens and to maintain public order and safety'.⁵⁷ As can be seen, at the constitutional level, industrial disasters fell under the state of emergency category, while natural disasters might trigger either a state of emergency or a state of danger. However, the legal framework was more complicated (and incoherent as well) as the then in-force law on civil defence allowed an industrial accident to be the basis for the declaration of a state of danger as long as it did not reach the level of a state of emergency.⁵⁸ Taking account of this legal framework, the Government decided to declare the red sludge disaster as a state of danger, which is a less serious type of SLO than the state of emergency.⁵⁹ In other words, the treatment of the consequences of the red sludge disaster was based on the regulation of the state of danger, contrary to the provisions of the Constitution, as some experts argued.⁶⁰ (It must be emphasised that this equivocal regulation [industrial and natural disasters might trigger either a state of emergency or a state of danger] ceased to exist thanks to the FL, which brings both natural disasters and industrial accidents under the state of danger category.)

4. The COVID-19 experience from the aspect of constitutional law

Although the first COVID-19 cases in Hungary were reported only on 4 March 2020, the Government had already formed an operational task force (corps) responsible for the defence

⁵⁵ The first case was the so-called taxi blockade in 1990. Protesting against the hefty increase in the price of petrol, taxi drivers and private carriers blocked roads first in Budapest and then nationwide, paralysing traffic for three days. The second instance was in 2006, when then prime minister GYURCSÁNY Ferenc's famous 'we lied' speech was leaked, causing a nationwide political crisis, mass protests, and rioting. The third case was the red sludge disaster, which was obviously an industrial accident.

⁵⁶ Constitution 19. § para. (3) i)

⁵⁷ Constitution 35. § para. (1) i)

⁵⁸ Act XXVII of 1996 on Civil Defence 2. § para. (2)

⁵⁹ Cf. Farkas and Till, 2016, p. 65. As Kádár emphasises, a state of emergency may be declared when the lives and property of citizens face grave endangerment *on a mass scale*, while a state of danger may be declared even on the grounds of a local crisis with limited scope (Kádár, 2011, p. 95.)

⁶⁰ Till, 2019, [23]

against COVID-19, headed by the Minister of Interior, on 31 January. The Government declared a state of danger for the entire country on 11 March via a government decree,⁶¹ which entered into force immediately after its promulgation. The decree itself was rather short, indicating that further decrees would include extraordinary measures related to the state of danger and that the Government would continually review the necessity of the existence of the state of danger.

The immediate declaration of the state of danger generated fierce debates on the legality of the declaration. To highlight the constitutional and legal background, let us quote one more time the relevant provision of the FL: 'In the event of a natural disaster or industrial accident endangering life and property, or in order to mitigate its consequences, the Government shall declare a state of danger [...]'. Although the official translation of the FL uses the term 'natural disaster', this phrase does not perfectly reflect the Hungarian term 'elemi csapás', which may be literally translated as 'elemental strike'. Now let us examine the DMA, which defines state of danger as a state defined in Article 53 of the FL, which may be triggered especially by the following events:

- a) Natural disasters ('elemental strikes') or dangers originating from nature, especially floods, inland water overflow, earthquakes, etc.
- b) Natural accidents or dangers originating from civilisation (e.g. non-planned radioactive spill)
- c) Other hazards, especially human pandemics causing a mass disease outbreak, accidental pollution of surface water, groundwater depletion from drinking water abstraction, etc.

It should be noted that there is an obvious inconsistency between the FL and the DMA in that the FL allows the declaration of a state of danger only in the case of natural disasters or industrial accidents (itemised, closed list), while the DMA extends this list to a third element, i.e. 'other hazards'. Immediately after the declaration of a state of danger in light of the COVID-19 situation, a debate evolved over whether a human pandemic may be considered a natural disaster. Some were in agreement⁶² as the DMA is quite unambiguous in this regard since a pandemic is classified under 'other hazards', rather than under natural disasters. However, some scholars have contended that the DMA was (and still is) in conflict

⁶¹ Government Decree 40/2020 (III. 11.) on the declaration of state of danger

⁶² For example, ORBÁN Balázs, Deputy Minister of the Prime Minister's Office, claimed that the pandemic obviously qualifies as an elemental strike. He referred to the 'ten plagues of Egypt' in the Bible, three of which were a kind of mass disease (Orbán, 2020).

with the FL.⁶³ Since none of the entitled organs/persons have initiated a challenge so far, the Constitutional Court has not reviewed the conformity of the DMA with the FL.

In addition to the debate on the conformity between the DMA and the FL, the justification for the declaration of the state of danger was also challenged. According to some viewpoints, it was unnecessary to declare a state of danger since the pandemic situation could have been managed under the 'normal' legal order based on the special provisions of the HCA.⁶⁴ On the one hand, the HCA has a number of provisions on epidemiology (e.g. isolation, epidemiological surveillance, restriction or prohibition of the operation of all institutions, programmes or activities that can promote the spread of epidemics), all of which aim to prevent and control the spread of infectious diseases and epidemics and to increase human resistance to infectious diseases.⁶⁵ On the other hand, the law defines the so-called state of medical crisis⁶⁶ (related to the quasi-SLOs discussed previously), which may be declared by the Minister for Health in the case of a usually unexpected event that endangers or damages the life, physical integrity, or health of citizens, or the functioning of health care institutions, and which requires the cooperation of public health bodies, health care institutions, and other state and municipal bodies. Beyond that, a state of medical crisis may be declared even in the case of a public health emergency of international concern, as defined in the International Health Regulations. Once a state of medical crisis has been introduced, the rights of patients specified in the HCA may be limited, and other special provisions may apply.

Notwithstanding the special provisions of the HCA, we believe that the COVID-19 crisis could not have been handled effectively within the framework of the HCA. First, COVID-19 is not merely a medical crisis given that the economic, social, and labour market effects of the pandemic are tremendous. Second, we argue that the special provisions of the HCA have not been 'designed' to manage a pandemic that paralyses the entire country for several months. To illustrate that with an example, the HCA lays down that '[i]n case of an epidemic, the operation of all institutions, programs, or activities that can promote the spread of the epidemic, may be restricted or prohibited'.⁶⁷ Since universities are obviously institutions, they could have been closed according to the literal interpretation of the law. However, it would have been unrealistic and contrary to the rationale of the law if a sub-governmental authority (the Chief Medical Officer) would have ordered the closure of every higher educational institution even for a half year.

⁶³ Szente, 2020; Horváth, 2020

⁶⁴ Mészáros, 2019b; Lattmann, 2020

⁶⁵ HCA 56–74/A. §

⁶⁶ HCA Chapter XIV

⁶⁷ HCA 74. § para. (2) a)

It was clear from the beginning that the pandemic would not be overcome within a short period of time. As discussed earlier, the FL does not specify any concrete time span for either SLO in what is a unique feature. Instead, the FL states that a special legal order shall be terminated by the organ entitled to introduce the order if the conditions for its declaration no longer exist.⁶⁸ Subsequently, there was no legal time span for the state of danger declared on 11 March. Nevertheless, the force of the decrees issued by the Government under its emergency powers is limited: these decrees shall remain in force for 15 days ('sunset clause'), unless the Government, on the basis of authorisation by the National Assembly, extends those decrees.

Accordingly, the Government was forced to obtain the authorisation of the Parliament so as to be able to extend the application of the decrees adopted with respect to the state of danger. The cabinet submitted a legislative proposal to the Parliament on 20 March in which it asked for authorisation to rule by decree for an indefinite period of time. The crucial provision of the law reads as follows: 'On the basis of Article 53(3) of the Fundamental Law, the National Assembly authorises the Government to extend the applicability of the government decrees under Article 53 (1) and (2) of the Fundamental Law adopted in the state of danger until the end of the period of state of danger'. Thus, instead of seeking authorisation from the Parliament on a weekly basis, the Government's intention was to obtain approval for every future decree *in advance*.⁶⁹ This idea immediately raised intense political conflicts between the Government and the opposition. It must also be noted that the Government was pressed for time as the first decrees related to the state of danger would have ceased to have effect by 26 March without an extension. To accelerate the legislative procedure, the Government asked the Parliament to derogate from the provisions of the Rules of Procedure of the National Assembly. Since this derogation required the votes of at least four-fifths of the MPs present, the Government, which had only a two-thirds majority in Parliament, needed the support of a significant part of the opposition. However, the opposition, with the exception of some MPs, refused to vote for the derogation since they could not accept the idea of parliamentary authorisation for an indefinite period of time, which they considered to be akin to giving a 'blank cheque' to the Government. The opposition parties pushed for a 90-day deadline to be included in the law for authorisation, but the Government insisted on the indefinite period of time. Its main argument for the unlimited authorisation was the uncertainty caused by the pandemic, i.e. it was not clear if the Parliament would be inquorate or hold any session at all due to the epidemic.

68 FL Article 54 para. (3)

69 Cf. Győry and Weinberg, 2020, pp. 339–340.

Since the Government failed to secure the four-fifths majority, the Parliament was not allowed to derogate from the provisions of the Rules of Procedure. As a consequence, the law (titled Coronavirus Act; hereinafter CVA I)⁷⁰ was passed only on 30 March; thus, the government decrees issued before 15 March ceased to have effect. For instance, the Government issued a decree right after the declaration of the state of danger (11 March) to introduce several extraordinary measures (e.g. ban on indoor events with more than 100 visitors and outdoor events with more than 500 visitors; prohibition on students from attending higher educational institutes).⁷¹ As CVA I was passed only on 30 March, these extraordinary measures ceased to have effect on 27 March. Theoretically, the Government could have issued new decrees with the same extraordinary measures, but that would have been a clear misuse of the FL. In order to uphold the validity of some of these extraordinary measures, the Chief Medical Officer issued a so-called normative decision on 26 March, which, *inter alia*, prohibited foreign citizens from entering Hungary (with some exceptions) and students from attending higher educational institutes.⁷² However, even this action proved to be controversial from the perspective of constitutional law. First, according to the Act on Law-making, the Chief Medical Officer had no authority to issue normative decisions.⁷³ Second, it is untenable that a governmental officer may make a decision that profoundly affects a wide range of citizens. Nevertheless, it must be stressed that the action of the Chief Medical Officer was a temporary solution to fill the ‘regulation gap’ between 27 and 31 March. Right after the promulgation of CVA I, the Government issued new decrees in which it reintroduced these prohibitions.⁷⁴ In this case, there was no misuse since the Government took this action based on the ‘general’ authorisation of the Parliament.

Coming back to CVA I, the evaluation of the law was highly controversial. While the Government accused the opposition parties of hindering the containment of the epidemic, the opposition argued that by passing CVA I, the Parliament had given up regular control over the actions of the Government, which could now rule by decree, virtually unconstrained. In response, the Government claimed that CVA I provided a suitable guarantee since the law enabled the National Assembly to withdraw the authorisation before the end of the period of

⁷⁰ Act XII of 2020 on the Containment of Coronavirus (elsewhere often mentioned even as Authorisation Act)

⁷¹ Government Decree 41/2020 (III. 11.) on the measures to be taken during the state of danger declared for the prevention of the human epidemic endangering life and property and causing massive disease outbreaks, for the elimination of its consequences, and for the protection of the health and lives of Hungarian citizens

⁷² For the text of the decision see <https://koronavirus.gov.hu/cikkek/az-orszagos-tisztifoorvos-tilto-es-kotelezo-hatarozata-jarvanyugyi-helyzetre-tekintettel> (Accessed 10 March 2021).

⁷³ Act CXXX of 2010 on Law-making 23. § para. (1)

⁷⁴ Government Decree 81/2020 (IV. 1.) on extraordinary measures relating to the state of danger declared for the protection of health and lives and for the restoration of national economy

state of danger.⁷⁵ However, this ‘general’ authorisation without a concrete end date (though revocable) generated widespread criticism among domestic and foreign scholars.⁷⁶

Apart from the authorisation aspect, CVA I had another controversial element; it changed the rules of the Criminal Code on scaremongering, inserting a new provision as follows: ‘A person who, during the period of special legal order and in front of a large audience, states or disseminates false or distorted facts in such a way that is capable of hindering or obstructing the efficiency of the protection efforts is guilty of a felony and shall be punishable by imprisonment for one to five years’. Some civil organisations claimed that these stricter rules impose further restrictions on freedom of expression and freedom of speech.⁷⁷ As Bencze and Győry concluded, the equivocal elements of the new law go against the constitutional requirement stemming from the rule of law principle that laws that oblige ordinary citizens shall be clear and understandable. They also argued that this can have a chilling effect on the reporting of factual information about the pandemic.⁷⁸

However, the Constitutional Court ruled that the new criminal law regulations on scaremongering, to be applied during the implementation of the SLO, are not in conflict with the FL.⁷⁹ According to the petitioner who submitted the constitutional complaint, the new regulation restricts the right to freedom of speech and provides a completely unpredictable and wide space for arbitrary application of the law; furthermore, it is incomprehensible and leaves the addressees of the norm in uncertainty. In its decision, the Constitutional Court found that scaremongering according to the disputed statutory provision concerns a narrow scope of communications: it prohibits the communication of knowingly false or distorted facts to the general public, but only if it is performed during the period of the SLO, in a manner suitable for hindering defence. However, the prohibition is only applicable to stating knowingly false or distorted facts; it does not apply to critical opinions. The threat under criminal law therefore does not extend to untrue information if the perpetrator was unaware of its nature. Considering the above-mentioned aspects, the Constitutional Court rejected the constitutional complaint.

⁷⁵ CVA I 3. § para. (2). However, as Győry and Weinberg (2020, p. 340.) point out, this provision provided no legally enforceable guarantees.

⁷⁶ For example, CVA I was compared to Hitler’s *Ermächtigungsgesetz* of 1933 (Halmai, 2020) and evaluated as a ‘creeping Coronavirus coup’ (Bartha, 2020).

⁷⁷ Hungarian Helsinki Committee, 2020, p. 9; Hungarian Civil Liberties Union, 2020

⁷⁸ Bencze and Győry, 2021

⁷⁹ Decision no. 15/2020. (VII. 8.) of the Constitutional Court. For an English summary of the decision, see <http://public.mkab.hu/dev/dontesek.nsf/o/BD83430C4D2A942AC125855E005C4028?OpenDocument&english> (Accessed 25 March 2021). For an evaluation of the decision, see Koltay, 2020, and for a more critical perspective, see Drinóczy, 2021.

The state of danger was terminated on 18 July 2020.⁸⁰ Simultaneously, CVA I was repealed and the 'general' authorisation ceased to exist. The FL stipulates that upon the termination of a state of danger, government decrees issued under its emergency powers shall cease to have effect in consideration of the due process of law, but it was crucial to sustain the effect of most of these decrees. Therefore, the Parliament passed the so-called Transitional Act⁸¹ encompassing a number of provisions of the government decrees. Furthermore, the Transitional Act incorporated a new concept called 'epidemiological preparedness' into the HCA. Once a state of medical crisis has been declared, epidemiological preparedness enables the Government to introduce various measures (e.g. restrictions on opening hours of shops, restrictions on movement of citizens) without declaring a state of danger. While terminating the state of danger, the Government simultaneously declared a state of medical crisis and epidemiological preparedness.⁸² These quasi-SLOs still provided large room for manoeuvre for the Government, although not as large as that provided by the state of danger.

As the second wave of COVID-19 became increasingly intense, the Government declared a state of danger again in early November 2020.⁸³ Bearing in mind that the decrees of the Government, if not extended, remain in force for only 15 days, the cabinet was forced again to obtain parliamentary authorisation. The Parliament granted general authorisation (just like at the end of March, as outlined above), but this time with a significant difference. Contrary to the unlimited authorisation stipulated in CVA I, the new law (hereinafter CVA II) passed on 10 November 2020 restricted its own term of validity for 90 days after promulgation.⁸⁴ As the 90-day-term expired on 8 February 2021, CVA II was automatically repealed. However, this did not mean the final termination of the state of danger since the Government introduced the SLO on 29 January for the third time.⁸⁵ This decree entered into force on 8 February and was still in force at the time of completion of this manuscript. The government decree was soon followed by a law⁸⁶ (hereinafter CVA III) through which the Parliament again granted general authorisation for the Government to rule by decree. Originally, the authorisation was valid for 90 days, but was prolonged on 18 May 2021; it will remain in force until 15 days after

80 Government Decree 282/2020. (VI. 17.) on the termination of the state of danger declared on 11 March 2020
81 Act LVIII of 2020 on the Transitional Rules and Epidemiological Preparedness related to the Cessation of the State of Danger

82 Government Decree 283/2020. (VI. 17.) on introducing a state of epidemiological preparedness

83 Government Decree 478/2020. (XI. 3.) on the declaration of state of danger

84 Act CIX of 2020 on the Containment of the Second Wave of Coronavirus 5. §

85 Government Decree 26/2021. (I. 29.) on the termination of the state of danger declared by Government Decree 478/2020. (XI. 3.)

86 Act I of 2021 on the Containment of Coronavirus

the start of the autumn parliamentary session (effectively September 2021).⁸⁷ (However, the Government may decide to end the state of danger before that.)

Beyond the issues of authorisation and prolongation, the restrictions on access to data of public interest also provoked political and legal debates. Government decrees⁸⁸ allowed public bodies to extend the deadline for responding to public interest data requests to 45 days, which could be prolonged again by an additional 45 days (instead of the original 15 + 15 days), if complying with the request within 15 days was likely to jeopardise the performance of public tasks in relation to the state of danger. As the Country Memorandum of the Council of Europe noted, government representatives felt this extension was necessary since public bodies (including hospitals) were not trained to provide information during a pandemic and required extra time.⁸⁹ An opposition MP submitted a petition to the Constitutional Court, seeking annulment of the government decree since the right of access to data of public interest and the public interest in the transparent use of public funds cannot be restricted for the purpose of achieving epidemiological objectives in such a way that they are completely emptied. While the court ruled that the decree is not in conflict with the FL, it also laid down that the regulation remains within the constitutional scope of interpretation provided the data controller does not invoke the state of danger in general terms, but actually demonstrates that the concerned public task would have been at risk if it were forced to respond to the data request within the time limit set by the Act on the Right to Information Self-Determination.⁹⁰

Finally, two additional restrictions may have raised rule of law concerns. At the beginning of the second wave of the pandemic (November 2020), the Government declared a ban on initiating local or national referendums⁹¹ and suspended the right to assemble,⁹² making it impossible to hold any public assembly, protests, or political demonstrations. The absolute ban on assemblies was in force for more than a half year and was partly lifted only at the end of May 2021 as part of the fifth stage of the phasing out of protection measures. The ban on initiating referendums remained in force at the time of completion of this manuscript.

⁸⁷ Act XL of 2021 on the Amendment of Act I of 2021 on the Containment of Coronavirus

⁸⁸ Government Decree 179/2020. (V. 4.) on the deviation from certain provisions on data protection and data requests during the state of danger; Government Decree 521/2020. (XI. 25.) on the deviation from certain provisions on data requests during the state of danger. In addition to the extension of the deadline, the decrees also disallowed the oral or personal submission of public interest data requests.

⁸⁹ CoE, 2021, section 14

⁹⁰ Decision no. 15/2021. (V. 13.) of the Constitutional Court. For an English summary of the decision, see <http://public.mkab.hu/dev/dontesek.nsf/o/52D7D58B7355E709C125867200613717?OpenDocument&english> (Accessed 10 April 2021).

⁹¹ Government Decree 483/2020. (XI. 5.) on transitional provisions relating to by-elections during the period of state of danger

⁹² Government Decree 484/2020 (XI.10.) on the second phase of protective measures during emergency 5. § para. (1)

5. COVID-19 as an economic crisis: fiscal and monetary measures of crisis management

5.1. Hungarian fiscal policy amidst the epidemiological state of emergency

As a result of the pandemic-driven economic crisis, fiscal policy has been facing the double challenge of declining revenue and rising expenditure, so the fiscal improvement plan needs to examine both segments. On the revenue side, the crisis has contributed to a decline in tax revenues, rise in unemployment, and fall in consumption due to lagging investments, among other things. On the expenditure side, there has been an increase in spending due to higher subsidies. At the same time, the budget is being restructured by transfers and structural changes, which are reflected in the amendments to the Budget Act. Since 2008, Hungary has set frugal public finances and responsible fiscal policy as its goal. The fundamental goal of the fiscal policy has been the stabilisation of public debt in the long run.⁹³ Government deficit is related to government debt, which is created by financing the deficit.⁹⁴ Strengthening fiscal discipline is a necessary step because the level of public debt has been rising steadily due to the significant level of general government deficit.⁹⁵

The implementation of the basic legislation and budgetary procedure underscore the importance of public debt in the system. Thus, the whole budgetary management process is focused on the objective of continuously reducing public debt, or at least preventing an increase in public debt, so as to achieve the optimal level of debt in the long term (50% of GDP). Thus, the public debt policy has become the core aspect of fiscal policy.⁹⁶

Obviously, there might be exceptional situations or serious problems arising from unavoidable external causes that could affect the fiscal improvement plan, for which the FL allows a derogation from the strict rules (permanent decline of the national economy, restoration of the national economic balance, etc.). The Act on the Economic Stability of Hungary⁹⁷ (hereinafter Stability Act) interprets the rule on economic crisis broadly by stating that any situation in which the real value of the annual gross domestic product decreases must be interpreted as a permanent and significant decline in the national economy. In this case, the Stability Act allows the general government deficit to exceed

⁹³ Act LXXV of 2008 on Cost-effective State Management and Fiscal Responsibility

⁹⁴ Vígvári, 2005, pp. 175–178.

⁹⁵ Sivák, Szemplér and Vígvári, 2013, pp. 49–51. In 2006, the general government deficit was 9.4% of the GDP.

⁹⁶ Kovács, 2016, pp. 320–326.

⁹⁷ Act CXCV of 2011 on the Economic Stability of Hungary

3% of the gross domestic product and the government debt ratio to decline.⁹⁸ Therefore, the pandemic-driven economic crisis justifies a departure from the public debt rule. An increase in public debt in the event of an economic crisis is natural, as state overspending and higher subsidies widen the budget deficit. The utilisation of additional resources is more important than the size of the deficit because if the budget money is spent efficiently, it will lay the foundation for not only recovery from the economic crisis but also future economic growth.⁹⁹

The Act on Public Finances¹⁰⁰ provides a solution to the unfavourable development of the central budget amidst the implementation of extraordinary measures aimed at executing governmental tasks and ensuring balanced budget management. The previous legislation was supplemented by the legislature with transitional measures with respect to the state of danger. The legislature conferred a wide range of powers on the Government, allowing budget expenditures not included in the budget law and the imposition of extraordinary payment obligations. The provision on the special legal order relaxes the regulation of public burden. Thus, it is possible to deviate from the strict procedural and substantive rules establishing payment obligations, with law determining the extent of deviation necessary to reverse the economic downturn and restore balance.¹⁰¹

Fiscal instruments can be divided into tax instruments on the revenue side of the budget and aid instruments on the expenditure side. Some of the instruments have already been introduced in 2020, while others will not enter into force until 2021 and will have an impact only from that date. In terms of the mechanism of action, aid instruments have a faster influence on the economy. Meanwhile, tax instruments have a long-term effect on economic operators with a few exceptions, such as the introduction of a new tax. The economic problems caused by the crisis necessitated an amendment to the 2020 budget.¹⁰² In the framework of economic protection measures, legislators redeployed budget appropriations in the order of several trillion HUFs with which two separate funds were established in the budget. This will be carried forward to the 2021 annual budget year for epidemiological expenditure and economic protection.¹⁰³ This move is justified by the fact that the epidemiological state of danger did not cease in 2020 and is expected to have an impact on both the economy and the budget in 2021. Economic projections indicate a significant

98 Stability Act 7. §

99 Gazdasági válság 2020: A modern monetáris elmélet lesz a megoldás? (<https://elemzeskozpont.hu/gazdasagi-valsag-2021-modern-monetaris-elmelet-lesz-megoldas>, accessed 10 April 2020).

100 Act CXCV of 2011 on Public Finances 40. §

101 Stability Act 38/A. §

102 Government Decree 92/2020. (IV.6.) on the derogations applicable to the central budget of Hungary for the year 2020 during the period of state of danger

103 Act XC of 2020 on the Central Budget of Hungary for 2021

positive change in economic growth in 2021. Still, the fulfilment of the forecasts depends on how long the epidemiological state of danger will last in 2021.¹⁰⁴ Currently, it appears that the emergency situation will continue to dominate society and the economy in the first half of 2021.

In addition to the transfers to the subsystem of the central budget, legislative amendments to the municipal subsystem have also been made. The purpose of the amendments was two-fold: transferring resources, such as the car tax income, to the central budget, while imposing restrictions on municipal fees and tax reductions through which the Government provides indirect support to entrepreneurs and individuals.

Economic independence is an essential condition for local government autonomy, as reinforced by both constitutional provisions and the European Charter of Local Self-Government.¹⁰⁵ Resource regulation is closely related to the performance of public tasks.¹⁰⁶ Although the state has gradually taken over local government functions, making them increasingly centralised, local governments are still responsible for basic public services for which local government revenues are essential.¹⁰⁷ However, the state of danger due to the pandemic has superseded these principles, and the state is seeking to centralise resources and reallocate them towards the containment of the coronavirus outbreak and economic protection. As a result, municipalities are finding themselves in a difficult situation, as they may not be able to perform urban management tasks to an adequate standard and could face social problems as a consequence. The Government is trying to correct this situation by automatically re-examining the lack of resources for smaller municipalities and for larger municipalities on a case-by-case basis. In doing so, the Government is trying to assert a kind of balancing mechanism by withdrawing funds from better-off municipalities and redirecting resources to worse-off municipalities. The economic crisis will certainly leave a capacious mark on the management of both the state and local governments.

Three main provisions will have a significant impact on local government management:

- redirection of the motor vehicle tax to the central budget,
- amended business tax, and
- restrictions on municipal fees

¹⁰⁴ Jackson et al., 2020, pp. 5–13. According to various projections (IMF, World Bank, OECD), the economic growth will be between 2.8% and 5.2% in 2021.

¹⁰⁵ Lentner, 2017, pp. 136–137.

¹⁰⁶ Horváth M., Péteri and Vécsei, 2014, pp. 121–123.

¹⁰⁷ Horváth M., 2014, pp. 185–188.

In addition, the rules and measures taken in the context of budgetary management and the economic crisis can in general be divided into the following areas:¹⁰⁸

- job preservation and job creation,
- support for priority sectors and domestic businesses,
- support for families, and
- maintenance of the security of supply

Preserving jobs and creating new ones has been a priority in government programmes. As a result of the decrease in demand, employers have been forced to lay off workers or reduce their working hours. The Government has introduced a grant of up to 70% of the net wages lost due to shortened working hours. Furthermore, in the priority sectors, employers are exempted from making social security contributions, while employee contributions are exempted for pension and have been reduced to the legal minimum for health insurance premium. A 2-percentage point reduction in the social tax contribution has also been implemented to promote employment through tax relief. Special payment facilities and tax reduction options are available for employers, such as the temporary abolition of labour market contributions. For some companies operating in priority sectors (tourism and hospitality, health care, and food industry, among others), the Government applies tax breaks and tax exemptions (for small taxpayers and small business taxpayers).¹⁰⁹ Emphasis is being placed on support for investment and technological development with a view to creating jobs. The Government is prioritising environmental protection. Industries with strong growth potential in the future, such as artificial intelligence and quantum technology, are receiving increased attention, as are sectors that have been affected by the economic crisis. To ensure a stable supply of human resources, government programmes are providing support for retraining and further training. In addition to supporting housing investments, the Government is providing families with a moratorium on loan repayments. In addition, child care allowances, child care fees, and child-raising support benefits, which were scheduled to expire, have been extended for the duration of the state of danger.

Thus, the support policy focuses on retaining jobs in the short term, but does not increase benefits for the unemployed. This is a continuation of the economic policies of recent years, which have prioritised growth in employment but not given much importance to jobseekers. The labour shortages of recent years justify this approach, but during the pandemic-driven

108 Convergence Programme of Hungary 2020–2024 (https://ec.europa.eu/info/sites/info/files/2020-european-semester-convergence-programme-hungary_en.pdf, accessed 10 April 2021)

109 Act CXLVII of 2012 on the Fixed-Rate Tax of Low Tax-Bracket Enterprises and on Small Business Tax

economic crisis, it would be expedient to at least temporarily increase both the amount and duration of unemployment benefits.

In an emergency, the smooth provision of public services is of paramount importance, and in the exercise of social interest, the functioning of certain enterprises may be subject to state supervision. Public services that are under state or municipal control or indirect ownership are easier to enforce in the public interest in the event of an emergency compared to services offered by undertakings independent of the public sector. However, the operation of such enterprises may be brought under state supervision during an emergency, as was the case in 2020 for undertakings of national economic importance.¹¹⁰

5.2. Monetary policy in the economic crisis

In addition to fiscal policy, monetary policy supports the economic policy objectives.¹¹¹ Monetary policy is independent of fiscal policy, but since the two systems are interlinked, proper coordination is the cornerstone of the success of the monetary and fiscal policy.¹¹² The Act on Hungarian National Bank¹¹³ (hereinafter MNB Act) stresses that the central bank supports the Government's economic policy without jeopardising its primary objective.¹¹⁴ To implement the monetary policy, the central bank has a wide range of tools at its disposal, which can influence the supply of and the demand for money and credit. These instruments can be considered traditional central bank instruments. However, the previous economic crisis¹¹⁵ has already brought about new trends in the monetary policy of the world's leading central banks. Academic literature points out that new elements have been added to the toolbox of central banks, whose role in managing the economic crisis has significantly increased. The interest rate cut below zero, which is a conventional instrument, no longer has a sufficient effect. Thus, some central banks have announced securities purchase programmes, thereby increasing money market liquidity.¹¹⁶ During the 2008 crisis, the European Central Bank used the acceptance of corporate loan claims as collateral, which became an important tool in euro area monetary policy even after the crisis.¹¹⁷

¹¹⁰ Lentner and Cseh, 2020, p. 4. As the authors point out, so-called military management groups operate at 71 companies of strategic importance. For the role of the state in the public sector, see Lentner and Molnár, 2020, pp. 1–6; Lentner, 2015, pp. 763–783.

¹¹¹ Nagy, 2006, pp. 239–270.

¹¹² Sivák and Vígvári, 2012, pp. 204–205.

¹¹³ Act CXXXIX of 2013 on the National Bank of Hungary

¹¹⁴ According to the MNB Act 3. § para (1), the primary objective of the National Bank of Hungary shall be to achieve and maintain price stability.

¹¹⁵ Nagy, 2020, pp. 85–88.

¹¹⁶ Lentner, 2019, pp. 184–185.

¹¹⁷ MNB, 2020

Amidst the current crisis, central banks have further expanded their instrument system in terms of not just volume. The US Federal Reserve System (FRS) acted swiftly in response to the economic crisis, announcing a quantitative easing in addition to interest rate cuts without a budget. The FRS has purchased government bonds, real estate-based mortgages, and corporate bonds as part of its asset purchases.¹¹⁸ The National Bank of Hungary (MNB) also changed its monetary policy tools to mitigate the effects of the economic crisis. In its summary of the COVID-19 crisis, the MNB sets out in detail the objectives of the monetary policy and the instruments allocated to it.¹¹⁹

The MNB divided the assets into three areas based on the objectives:

- providing liquidity,
- more flexibility in short-term yields, and
- assets affecting long-term returns

To increase liquidity, the central bank uses new instruments. The MNB has expanded the range of its collateral framework with corporate loans, i.e. claims on large companies. As a result, capital debts of more than one billion HUF covered by Hungarian law may be included as collateral. Furthermore, MNB funds have become available to investment funds, thus allowing them to borrow from the central bank while the units are covered (units of denominated securities and real estate funds). A long-term central bank loan instrument has also been introduced to ease financial market tensions. Thus, the MNB's secured loan with a maximum maturity of five years and a minimum interest rate at the central bank base rate is intended to ensure stability in the financial market. The provision concerning the reserve requirement also increased liquidity. The MNB has suspended the reserve requirement and will not apply any legal consequences in the event of non-compliance.¹²⁰

To make short-term yields flexible, the central bank reintroduced the one-week deposit facility and made the interest rate corridor symmetrical. The central bank base rate became the centre of the interest rate corridor flanked by the overnight deposit rate on one side and the overnight one-week secured loan interest rate on the other. This provided flexibility for monetary transmission.

The introduction of instruments affecting long-term yields also served to increase liquidity. The central bank relaunched the Bond Funding for Growth Scheme (BGS) as a new programme called the Funding for Growth Scheme Go! (FGS Go!), which further expanded the financing

¹¹⁸ <https://elemzeskozpont.hu/gazdasagi-valsag-2021-modern-monetaris-elmelet-lesz-megoldas> (Accessed 15 April 2021)

¹¹⁹ The outline of the monetary policy toolbox is based on MNB, 2020.

¹²⁰ MNB Act 19–20. §

of domestic enterprises. This means beneficial financing, but it may not bring entirely new liquidity, so they can replace their previous loans with new loans that have better terms.¹²¹ By modifying the Growth Bond Program,¹²² the central bank eased the conditions so that exposure to a group of companies increased by 50 billion HUF and the term of the bonds changed to 20 years. These included the introduction of the long credit lines and the asset purchase programme, which were discussed previously. The central bank has also revamped the current government securities and mortgage bond purchase programme. Within the framework of the mortgage bond purchase programme launched in 2018 and restarted in 2020, the MNB purchases fixed-rate mortgage bonds issued in Hungarian forints on the primary and secondary markets; these bonds have a residual maturity of at least one year and are publicly traded on the Budapest Stock Exchange. Thus, in addition to traditional monetary policy instruments, the central bank uses other assets to increase liquidity in the money market.

6. Summary

In light of the Venice Commission's opinion concerning the FL, the part on SLOs appears to be generally in line with European standards.¹²³ Nevertheless, drawing on 351 constitutions (both current and defunct), a cluster analysis carried out by Bjørnskov and Voigt found that three particular constitutions poorly fit into any family of constitutions: the emergency provisions of the present constitutions of Germany (the 1949 constitution as amended in 1968), Hungary, and Montenegro are structurally different from most other emergency constitutions.¹²⁴ As we have demonstrated, the Hungarian regulation of emergency powers has some particular features. Not only is the length of the SLO part of the FL unusual, but the six different types of SLOs are spectacular as well. Obviously, one cannot define the 'ideal' number of types of SLOs. Some suggest that a regulation with more SLO categories may prevent government 'overreaction',¹²⁵ while others claim that too many (partly overlapping) categories make the legal framework overly complicated, triggering legal and political debates.¹²⁶ As *Alexander Hamilton* warned almost a quarter century ago, '[t]he circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed

121 Palócz and Matheika, 2020, p. 586.

122 For the details, see <https://www.mnb.hu/monetaris-politika/novekedesi-kotvenyprogram-nkp> (Accessed 20 April 2021).

123 Venice Commission, 2011, section 137.

124 Bjørnskov and Voigt, 2018, pp. 117–118.

125 Cf. Jakab, 2009, p. 635.; Till, 2017, p. 73.

126 Cf. Drinóczi and Bien-Kacala, 2020, p. 191.

on the power to which the care of it is committed'.¹²⁷ Perhaps we may agree with Hamilton in that respect as it seems to be an implausible task to create permanently new SLO categories for every potential risk and threat; however, the previous amendments to the Constitution and the FL exactly followed this method. As we have noted, the Ninth Amendment of the FL is a turning point in this regard since it simplifies the overall picture by setting up three, more inclusive SLO categories. Furthermore, the Hungarian regulation is special because of the lack of a general 'power centre' during the execution of an SLO. As outlined above, the NDC, the President of the Republic, and the Government may act as a 'crisis manager' depending on the type of SLO declared. The Ninth Amendment of the FL introduces a significant change by giving the Government a central role regardless of which SLO is introduced.

As for the constitutional law aspects of the COVID-19 crisis, Hungary faced both domestic and international criticism for the 'general' authorisation granted by CVA I. Some of the concerns proved to be unfounded since the Government did not use this broad authorisation to the extent that many had feared. As Győry and Weinberg concluded, though this authorisation was arguably abused by the Government to a certain extent, it was not employed to turn the country into an overtly autocratic state.¹²⁸ Apart from authorisation and rule by decree issues, a number of legal controversies emerged during the COVID-19 crisis. As the Deputy State Secretary for Public Law Legislation noted self-critically, the Hungarian legal system was not prepared to handle the uncertainty stemming from the pandemic, and the provisions of the DMA were hardly suitable for managing the containment of COVID-19.¹²⁹ Due to the unprecedented epidemiological crisis, the Government was forced to equilibrate between legality and efficiency, which inevitably provoked disputes on both the political and legal aspects of the emergency powers.

Finally, it must be emphasised once again that the constitutional and legal framework of the SLO system will undergo a fundamental change from July 2023.¹³⁰ The new regulation obviously gives more leeway to the Government in emergency situations, which may trigger even more political and legal debates. However, we also hope that Hungary will not be urged to 'test' this new regulation in the forthcoming decades.

¹²⁷ *The Federalist* no. 23. is cited by Gross, 2004, pp. 8–9. Hamilton's essay is available at <https://guides.loc.gov/federalist-papers/text-21-30#s-lg-box-wrapper-25493336> (Accessed 5 May 2021)

¹²⁸ Győry and Weinberg, 2020, p. 330.

¹²⁹ Salgó, 2020, p. 9.

¹³⁰ Well after the time of completion of this manuscript, the Tenth Amendment of the FL (May 2022) made it possible to declare state of danger not only in the event of 'a serious incident endangering life and property, in particular a natural disaster or industrial accident', but also in the case of 'an armed conflict, war or humanitarian disaster in a neighbouring country'. This amendment would clearly allow the Government to declare a state of danger due to the ongoing war in Ukraine.

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