

# Summary: Pondering about emergency powers during COVID-19

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Considering that this volume has three basic points of view, the summary unfolds as follows. First, we compare the legal framework of the emergency powers, focusing on the constitutional level. Next, we outline the aspects of constitutional law about the COVID-19 crisis, highlighting the governments' reactions and the emerging legal problems. Finally, we study the financial and economic background of the COVID-19 crisis, examining the fiscal and monetary measures of crisis management.

## 1. The constitutional and legal framework of the emergency regimes

### 1.1. *Emergency regimes in the constitutions: weight and categories*

According to a recent study by Bjørnskov and Voigt, about 171 constitutions contained at least some emergency provisions in 2013.<sup>1</sup> In another article, the authors pointed out that between 1985 and 2014, 137 countries, that is, about two-thirds of the sovereign states, declared

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<sup>1</sup> Bjørnskov and Voigt, 2018a, p. 105.

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some form of state of emergency.<sup>2</sup> The article suggests that emergencies may not be extraordinary, and exceptional circumstances are not entirely exceptional.

Studies examining the constitutional framework of a state of emergency often conclude that constitutions differ significantly in terms of the depth, extent, and level of detail with which they deal with emergency regimes.<sup>3</sup> Discussing the causes of divergence is beyond the scope of this summary; however, it is safe to say that historical experiences, and the date and circumstances of the birth of the constitutions are decisive. As Kelemen Roland puts it that the imprints of the historical traditions of the 20th century are to be found on each constitution.<sup>4</sup> Attitudes toward emergency regimes are already diverging as to whether such provisions should have any place in the constitution at all. According to Scheppele, there are basically two positions to deal with threats to the state.<sup>5</sup> As per the “legalists,” crises of state must be met with legal responses even if such responses are different than they would be in normal and peaceful situations.<sup>6</sup> However, as per the “extra legalists,” “serious crises of state must be met with responses outside the law.”<sup>7</sup>

It is to be noted that each of the eight constitutions examined in this volume has provisions for emergency powers. However, it is not as obvious as one might believe since several constitutions (e.g., Austria, Denmark, Norway, and the United States) do not affect states of emergency at all. Thus, the ways in which the examined constitutions deal with emergency powers differ notably. In addition, it can be concluded that all the investigated countries follow the “legalist” standpoint.

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2 Bjørnskov and Voigt, 2018b, p. 110.

3 See e. g. Gross, 2004, pp. 6–8.; Scheppele, 2008, p. 166.; Khakee, 2009, pp. 11–12.

4 Kelemen, 2020, p. 211.

5 Scheppele, 2008, p. 165–166. Cf.: Venice Commission, 2020, II.D.22. (The Commission uses the terms “*constitutional*” and “*extra-constitutional*”.)

6 The term “special legal order” of the Hungarian Fundamental Law reflects this approach, since a special legal order is a kind of “legal order” (moreover, a legal order regulated by the constitution), even if it is “special”.

7 Scheppele, 2008, p. 165.

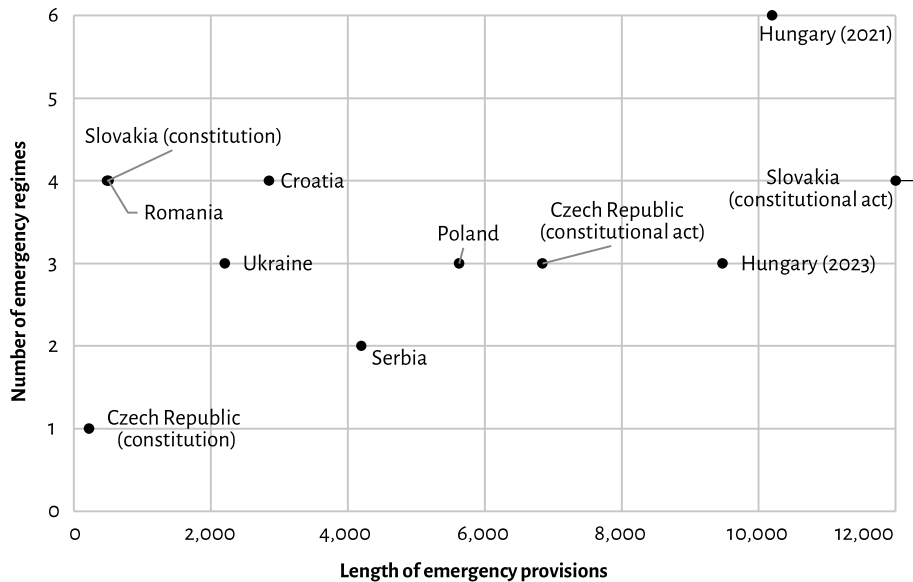


Figure 1. Emergency provisions in the constitutions. Source: Authors' compilation  
 Note: Based on its length (more than 34,000 characters), the constitutional act of Slovakia would not fit in the figure, therefore, we have placed it on the right side of the scatterplot

In Figure 1, the examined constitutions are placed on a scatterplot of two aspects. The first is the length of the emergency provisions (calculated in characters<sup>8</sup>), while the second is the number of distinct emergency regimes (e.g., state of war, state of emergency) mentioned by the constitution. The scatterplot plastically illustrates the heterogeneity of the examined constitutions and reveals striking differences.

It is worth mapping the position of the emergency provisions within the constitutions. Both the Hungarian Fundamental Law and the constitution of Poland devote a whole part/chapter to this issue, whereas, Croatia and Romania incorporate the emergency provisions in the chapters on the president. The Serbian constitution differs from the others since the regulation is placed in a part titled “Constitutionality and Legality.” Unlike these five constitutions, the constitution of Ukraine holds scattered provisions on emergency powers instead of a distinct regulation.

The regulation of emergency powers is unique in the Czech Republic and Slovakia. Both the constitutions make a short reference to the emergency powers; however, a law is dedicated to the state of emergency. As the authors of the country chapters emphasize, these laws are regarded as “constitutional acts,” which are an integral part of the constitutional system.

<sup>8</sup> The calculations were based on English translations of the constitutions.

As for the extension of the regulation, Figure 1 reveals striking differences. If the constitutional acts of the Czech Republic and Slovakia are excluded, the Hungarian Fundamental Law offers the most detailed regulation, while Poland comes second. It should be noted that the constitutions that deal with emergency powers in a distinct chapter have the most detailed provisions. At the other end of the scale, the constitutions of Czech Republic, Slovakia, and Romania regulate the emergency issue in a succinct way; bearing in mind that the first two countries have a separate constitutional act on state security. The remaining three constitutions – Croatia, Serbia, and Ukraine – take an intermediate position regarding the length of the regulation.

The categories of emergency regimes is the next aspect of comparison. It is obvious that the dangers threatening a state may be diverse in origin (e.g., external armed attack, internal conflicts, natural disasters, etc.) and severity. As Figure 1 demonstrates, the eight countries are far from consistent regulation. The Hungarian Fundamental Law is exceptional since it distinguishes between no less than six types of special legal orders; a “world record.” However, the Ninth Amendment of the Fundamental Law reduces the current six types to three (from July 1, 2023).

### 1.2. The nature of the emergency regimes

Table 13 offers a brief overview of the emergency regimes regulated by the constitutions of the eight countries.<sup>9</sup>

		Reasons for emergency regimes			
		External armed attack (war)	Domestic conflict	Natural disaster	Others
<b>Croatia</b>		State of war	Clear and present danger to the independence and unity of the state	Event of major natural disaster	Government bodies are prevented from performing their constitutional duties
<b>Czech Republic</b>	Constitution	State of war	—	—	—
	Constitutional act	State of war	Condition of threat to the state	State of emergency	—

<sup>9</sup> It must be noted that the proper translation of the various categories (emergency regimes) is rather challenging, as different English language sources (translation of constitutions, academic literature, governmental announcements etc.) use divergent wordings.

		Reasons for emergency regimes			
		External armed attack (war)	Domestic conflict	Natural disaster	Others
Hungary (2021)		State of national crisis State of preventive defense Unexpected attack	State of emergency	State of danger	State of terrorist threat
Hungary (2023)		State of war	State of emergency	State of danger	—
Poland		Martial law	State of exception	State of natural disaster	—
Romania		State of war mobilization	State of emergency		—
		State of siege			
Serbia		State of war	State of emergency		—
Slovakia	Constitution	War State of war	Exceptional state	State of emergency	—
	Constitutional act	War State of war	Exceptional state	State of emergency	—
Ukraine		Martial law	State of emergency	Ecological emergency	—

Table 13

*Nature of the emergency regimes**Source: Authors' compilation*

As can be seen, most emergency regimes fall into three basic categories:

- regimes related to war or external armed attack or threat thereof
- regimes related to domestic conflicts (e.g., riots, rebellions)
- regimes related to natural disasters

Some of the examined emergency regimes may be related to more than one category.

Each constitution deals, or, at least, mentions, emergency regimes related to war and external armed attack (and threat thereof). Most of the constitutions contain only one category for this kind of threat – state of war or martial law – however, the current version of the Hungarian Fundamental Law lays down three special legal orders, according to the nature and degree of the armed attack (and threat thereof). Similarly, the constitution of Slovakia

(and the related constitutional act) distinguishes between war and state of war, while the constitution of Romania encompasses the state of war and mobilization.

Each constitution incorporates a category for domestic conflicts. However, the constitution of the Czech Republic is an exception where the gap is filled by the constitutional act. The Croatian special regime of “clear and present danger to the independence and unity of the state” is different from other regimes as it encompasses various forms of imminent danger for the state, both of internal and external origin. Likewise, the “state of siege” in Romania addresses all the threats to the sovereignty, independence, and territorial integrity of the state.

The third “common” category of emergency regimes is related to natural and industrial disasters. Apart from Romania and Serbia, the constitutions (or constitutional acts) of all the other countries devote a distinct emergency regime for catastrophes. However, for Romania and Serbia, the “state of emergency,” in their wording, are broad categories that encompass threats stemming from domestic conflicts and disasters. The “state of emergency” in Ukraine functions similar to Romania and Serbia; nevertheless, the constitution of Ukraine includes “ecological emergency situation” for less severe disasters.

Beyond these three categories, the constitution of Croatia stipulates an emergency regime when “government bodies are prevented from performing their constitutional duties,” while the Hungarian Fundamental Law devotes a distinct category for terrorist threat.

It is important to note that most legal frameworks of the analyzed countries include “quasi-emergencies.” This refers to those emergency regimes, which do not have constitutional “rank” (i.e., the constitution does not mention them, and they lie within the “normal” functioning of the state), although their basic goal is to overcome a certain type of crisis through special provisions. Table 14 summarizes these quasi-emergencies.

	Quasi-emergency	Note
<b>Croatia</b>	—	—
<b>Czech Republic</b>	State of danger	May be ordered if people's lives, health, property, or the natural environment are at risk; however, the intensity of the threat is not significant
<b>Hungary</b>	Crisis caused by mass immigration	Special (more rigorous) rules apply to third-country citizens irregularly entering and/or staying in Hungary, and to asylum seekers
	Military crisis	Prepare for the impact of the disturbances evolving in neighboring countries or for the fulfillment of NATO obligations
	State of medical crisis	Special provisions for certain health care emergency situations
<b>Poland</b>	Crisis situation	It requires public authorities and armed forces to take special measures to eliminate or reduce threats and to effectively monitor them.

	Quasi-emergency	Note
Poland	State of epidemic threat	Introduced in each area in connection with the risk of an epidemic to take preventive measures
	State of epidemic	Introduced in each area to take anti-epidemic and preventive measures to minimize the effects of the epidemic
Romania	State of alert	Measures for a special situation of exceptional magnitude and intensity, which is temporary and proportionate to the current or future severity of the situation, and which is necessary for protecting life, health, and environment
	Emergency	Non-military event, which, due to its size and intensity, endangers the life and health of the population, the environment, important material, and cultural assets
Serbia	Emergency	Declared due to natural disasters, extraordinary events, or danger to the people, environment, and property in a local self-government
Slovakia	Crisis situation	May be ordered if the security of the state is damaged or endangered, and the authorized constitutional bodies shall declare an exceptional state, state of emergency, or emergency situation
	Emergency	A period of endangerment or period following an emergency that has a negative impact on human life, people's health, or property
Ukraine	—	—

Table 14  
 Quasi-emergency regimes  
 Source: Authors' compilation

However, the delimitation of “real” and quasi-emergency regimes is not always clear. For instance, as noted in the chapter on the Czech Republic, the legal literature considers a state of danger as the fourth type of emergency regime although neither the constitution nor the constitutional act on state security mentions this category.

### 1.3. President, parliament, or government? Shifts in the competencies

While comparing the constitutional framework of the analyzed states of Central and Eastern Europe, it is evident that the roles and competencies of the main actors, i.e., the presidents, the parliaments, and the governments, during a state of emergency varies from one country to another. The important question, “Who decides on introducing an emergency regime?” cannot have a general answer. Table 15 summarizes the regulations on the declaration of emergency regimes.

EMERGENCY POWERS IN CENTRAL AND EASTERN EUROPE

	Emergency regimes	Declaration	Note
<b>Croatia</b>	State of war	Declared by the president, following a decision of the parliament	—
	Clear and present danger	Not stipulated	—
	Major natural disaster		—
	Government bodies are prevented from performing their constitutional duties		—
<b>Czech Republic</b>	State of war	Declared by the parliament (the concurrence of an absolute majority of all deputies and an absolute majority of all senators is needed)	Not stipulated who may initiate the declaration.
	Condition of threat to the state	Declared by the parliament at the government's request (the concurrence of an absolute majority of all deputies and an absolute majority of all senators is needed)	—
	State of emergency	Declared by the government	Declared by the prime minister if a delay is imminent
	State of national crisis	Declared by the parliament (the concurrence of two thirds of all deputies is needed)	Declared by the president if the parliament is prevented from making such decisions
<b>Hungary</b>	State of emergency	Declared by the parliament (the concurrence of two thirds of all deputies is needed)	—
	State of preventive defense	Declared by the parliament (the concurrence of two thirds of deputies present is needed)	—
	Unexpected attack	No formal provision on declaration	The government is obliged to take immediate action
	State of terrorist threat	Declared by the parliament at the initiative of the government (the concurrence of two thirds of deputies present is needed)	—
<b>Poland</b>	State of danger	Declared by the government	—
	Martial law	Declared by the president at the government's request	The presidential decision is subject to review by the lower chamber of the parliament
	State of exception		
	State of natural disaster	Declared by the government	—



	Emergency regimes	Declaration	Note
<b>Romania</b>	State of war	Declared by the parliament in joint sittings of the two chambers	—
	Mobilization	Declared by the president with the prior consent of the parliament	—
	State of siege	Declared by the president	The presidential decree must be signed by the prime minister and is subject to review by the parliament.
	State of emergency	Declared by the president	Declared by the president, together with the president of the parliament and the prime minister, if the parliament is not able to convene
<b>Serbia</b>	State of war	Declared by the parliament at the joint request of the president and the government upon the receipt of the defense minister's report	—
	State of emergency	Declared by the president based on a decision of the parliament	—
<b>Slovakia</b>	War	Declared by the president at the request of the government	—
	State of war	Declared by the president at the request of the government	—
	Exceptional state	Declared by the government	—
	State of emergency	Declared by the government	—
<b>Ukraine</b>	Martial law	Declared by the president at the request of the National Security and Defense Council	The presidential decision is subject to review by the parliament
	State of emergency	Declared by the president at the request of the National Security and Defense Council or the government	
	Ecological emergency	Declared by the president at the request of the National Security and Defense Council or the government	

Table 15

Declaration of the emergency regimes

Source: Authors' compilation

Note: for ease of understanding, we used the term

- “president” for each head of state
- “parliament” for each legislative body
- “government” for each country's central political executive,
- regardless of the proper title of the positions or bodies.

The exact regulation differs from one country and emergency regime to another. In case of war/state of war/martial law, one may detect two basic procedures. It may be declared:

- by the parliament (Czech Republic, Hungary, Romania, and Serbia – at the joint request of the president and government)
- by the president based on a decision of the parliament (Croatia and Slovakia), the government (Poland), or the National Security and Defense Council (Ukraine)

Although the martial law can be declared without the involvement of the parliament in Poland and Ukraine, the presidential decision is subject to subsequent review by the parliament; therefore, the approval of the legislation cannot be circumvented in these countries, too.

The “severe” emergency regime, which may be triggered by domestic conflicts, shows significant similarities regarding its introduction, especially in Hungary, Poland, Serbia, and Ukraine. Meanwhile, the emergency regime related to natural and industrial disasters (a less “severe” form of emergency) may be declared by the government, even without the consent of the parliament (however, Ukraine and, to a certain degree, Romania are exceptions).

Concerning the role of the presidents, some of the examined countries attach greater importance and give more (emergency) power to the head of the state. This configuration is broadly in line with the general role of the president as stipulated by the constitutions. For example, the Polish constitution lays down that “The President of the Republic shall [...] safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory.”<sup>10</sup> Similarly, in Romania “The President of Romania shall represent the Romanian State and is the safeguard of the national independence, unity and territorial integrity of the country,”<sup>11</sup> in Croatia “The President of the Republic shall be responsible for the defense of the independence and territorial integrity of the Republic of Croatia,”<sup>12</sup> and in Ukraine “The President of Ukraine is the guarantor of state sovereignty [...]”<sup>13</sup> Evidently, these constitutions empower the presidents to declare the “severe” forms of emergency regimes, at least, most of them do. In contrast, in countries where the president is not portrayed as the guarantor of the sovereignty and/or independence (Czech Republic, Hungary, and Serbia), he/she plays a less significant role in the declaration of emergency regimes. However, this implication is situational, as one may detect counterexamples like Slovakia or the broad competencies of the Hungarian president during a state of emergency).

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<sup>10</sup> Article 126, para. 2

<sup>11</sup> Article 80, para (1)

<sup>12</sup> Article 94, para 3

<sup>13</sup> Article 102 para. 2

The declaration is just one side of the coin. It should also be investigated that, once an emergency regime has been introduced, who acts as a “crisis manager.” According to Ackerman, “The paradigm case for emergency powers has been an imminent threat to the very existence of the state, which necessitates empowering the Executive to take extraordinary measures.”<sup>14</sup> His definition clearly underlines the importance of the executive branch. The chapters on the eight countries reinforce that the executive – be it the president or the government – has a crucial role in overcoming the crisis. Once an emergency regime has been declared, the executive is empowered to put through measures that it would not be allowed to do in normal circumstances. Thus, emergency regimes imply a certain shift of competencies in favor of the executive. For example, in Croatia, during a state of war, the president may issue decrees with the force of law on the basis, and within the limits, of the powers conferred thereon by the parliament. In Poland, if the lower chamber of the parliament is unable to assemble during martial law, the president shall, on application of the government, issue regulations having the force of statute. In Hungary, during a state of emergency, the measures laid down in a cardinal act shall be introduced by the president in a decree. (The 2020 amendment to the Hungarian Fundamental Law [enters into force on July 1, 2023] brings a significant change. The new regulation plays down the role of the president, meanwhile the government acts as the “crisis manager” regardless of the declared special legal order.)

The crucial role of the executive, however, does not entail the marginalization of the parliaments. The legislative bodies, on the one hand, in most cases, may disapprove and revoke the presidential/governmental decrees related to emergency measures. On the other hand, the parliaments are often entitled to extend the ongoing emergency regime.

The special bodies related to emergencies are also worth mentioning. The Hungarian National Defence Council, set up solely in a state of national crisis and entrusted with a wide range of powers, is an unmatched body. The Supreme Defence Council in Romania is similar, although it is a regular administrative authority that operates permanently. The National Security Council of the Czech Republic, a consultative, decision-preparing body, acts as a permanent working group of the government, which, in contrast to the earlier two bodies, lacks strong competencies. The Parliamentary Council and the Security Council in Slovakia are similar, to a certain degree, to the Hungarian National Defence Council regarding their basic function (exercising the powers of the parliament and the government, respectively, during the war, state of war, and exceptional state, if they are obstructed for any reason).

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<sup>14</sup> Ackerman, 2004, p. 1031.

**1.4. Emergency regimes in practice**

The eight countries examined in this volume had little experience with states of emergency, especially before the COVID-19 crisis. Table 16 summarizes the emergency regimes of the past decades.

	Type of emergency regime	Frequency	Reason
<b>Croatia</b>	State of war	—	—
	Clear and present danger to the independence and unity of the state	—	—
	Major natural disaster	—	—
	Government bodies are prevented from performing their constitutional duties	—	—
<b>Czech Republic</b>	State of war	—	—
	State of emergency	4	Natural disasters
		1	COVID-19
Condition of threat to the state	—	—	
<b>Hungary</b>	State of national crisis	—	—
	State of preventive defense	—	—
	Unexpected attack	—	—
	State of emergency	—	—
	State of terrorist threat	—	—
	State of danger	15	Natural disasters
		1	Industrial accident
3		COVID-19	
<b>Poland</b>	Martial law	—	—
	State of exception	—	—
	State of natural disaster	—	—
<b>Romania</b>	State of war	—	—
	Mobilization	—	—
	State of siege	—	—
	State of emergency	1	COVID-19
<b>Serbia</b>	State of war	—	—
	State of emergency	1	COVID-19

	Type of emergency regime	Frequency	Reason
Slovakia	War	—	—
	State of war	—	—
	Exceptional state	—	—
	State of emergency	1	Deficiency in the health care system
		2	COVID-19
Ukraine	Martial law	1	Tension with Russia
	State of emergency	—	—
	Ecological emergency	2	Natural disasters

*Table 16*  
*Emergency regimes in practice*  
*Source: Authors' compilation*

In the post democratic transition period, Croatia and Poland have not declared any type of state of emergency. Both these countries relied on ordinary legislation to manage the COVID-19 crisis, without resorting to emergency powers. It is worth mentioning that, contrary to the common belief, officially no emergency regime was introduced during the Croatian War of Independence (1991 to 1995).

The COVID-19 crisis forced both Romania and Serbia to declare states of emergency for the first time in their post-transitional history. Neither country had introduced any emergency regime before the pandemic.

The remaining four countries had triggered their emergency powers before the COVID-19 crisis. The Czech Republic declared a state of emergency four times, each connected to natural disasters (floodings and hurricane), for specific parts of the state. The state of emergency declared due to the COVID-19 was the first one for the entire country. Similarly, natural disaster compelled Hungary to declare a state of danger. This type of special legal order has been declared fifteen times due to flooding and/or inland water overflow, and once due to an industrial accident. While these emergency measures had a limited geographic scope, the government thrice declared a state of danger for the entire country due to the COVID-19.

Slovakia and Ukraine are the only countries that imposed emergency regimes for reasons other than natural disasters or COVID-19. In Slovakia, a state of emergency was declared in 2011 due to a deficiency in the health care system. As mentioned in the chapter on Slovakia, the declaration of the state of emergency was primarily aimed at ensuring proper operation of the health care system and banning certain groups of workers (primarily the medical staff) from exercising their right to strike. Following that, the COVID-19 twice triggered a state of emergency. Ukraine is the only state that has introduced an emergency regime related to war.

A period of martial law was introduced in 2018 in 10 regions of Ukraine due to the increasing tension with Russia. In addition, the environmental emergency zone regime was introduced twice due to catastrophic floods.

One may conclude that natural disasters (primarily floods) and the COVID-19 crisis were the primary reasons of introduction of emergency regimes. There are only three events – industrial accident in Hungary, health care system crisis in Slovakia, and martial law in Ukraine – that do not fall in the categories of natural disasters or COVID-19.

## **2. Experiences during COVID-19 from the aspect of constitutional law**

It may be assumed that the restrictive measures of the states facing similar difficulties due to the coronavirus pandemic would be similar. However, the legal regulations providing a framework for these are different. Regarding the countries examined, there is a discrepancy in terms of whether the emergency measures are ordered at a constitutional or a statutory level. The response of the Czech Republic, Hungary, Romania, Serbia, and Slovakia are similar, whereby, all the five states ordered emergency measures at a constitutional level with a special legal regime to be proclaimed in the event of a disaster, a state of danger (in the case of Hungary), or a state of emergency (in the case of the other countries). In some of the countries – such as the Czech Republic, Hungary, and Serbia – this special legal regime was introduced for the entire state for the first time in modern history.

Although the examined states ordered or extended the special legal regime during the different waves of the coronavirus pandemic, the regulation of the temporal scope of the special legal order shows a varied picture. In the initial phase of the coronavirus epidemic, the minister of health of the Czech Republic introduced emergency measures based on the regulations of the Act on the Protection of Public Health. Later, the Czech government considered it necessary to introduce a special legal regime under the constitution. Thus, a state of emergency was declared for the entire country on March 12, 2020. After two extensions, the state of emergency was terminated on May 17, 2020. However, the special legal regime was reintroduced on October 5, 2020, which was extended several times and was in force until April 11, 2021. In Hungary, a state of danger was entered into force on March 11, 2020. Under the Hungarian constitutional regulations, a special legal order can be terminated by the body that is authorized to introduce it, if the conditions for its announcement are no longer met. Thus, the decree of the Hungarian government did not set a specific time limit for the state of danger. Due to improved situation, at the request of the Hungarian parliament, the government abolished the special legal order on June 18, 2020. However, the government declared a state of medical crisis and epidemiological preparedness, based on the Transitional Act, as a

justification for maintaining a number of measures and restrictions. Due to the subsequent waves of the coronavirus pandemic, after a short period of “normal” legal order, the government, once again, declared a state of danger in early November 2020 and on January 29, 2021. Thus, the state of danger was in effect at the time of completion of this manuscript.

In Romania, the president ordered a state of emergency through a presidential decree on March 16, 2020, and extended it once for a period of thirty days. However, later the legal framework of the Romanian crisis management measures was reconsidered through an Act, which stipulated the state of alert. Thus, a state of alert was introduced in the middle of May 2020 and was extended multiple times. The state of alert was in force in Romania at the time of closing the manuscript. In Serbia, the state of emergency was introduced on March 15, 2020; however, coronavirus was declared as an epidemic four days later, leading to public debates. The declaration of the state of emergency did not specify the duration of the special legal regime, which was terminated by a subsequent decision on May 6, 2020. In Slovakia, a country-wide emergency situation was introduced on March 12, 2020. The Slovak government introduced a special legal regime in the form of a state of emergency only three days later on March 15, 2020. During the first wave of the pandemic, the state of emergency was in effect for 90 days. During the second wave, the Slovak government declared a state of emergency on October 1, 2020, for 45 days. The special legal regime was extended several times due to an amendment to the relevant Constitutional Act. The state of emergency was terminated on May 14, 2021; however the emergency has been in effect since its introduction in March 2020. It is worth noting, that the first state of emergency solely affected the healthcare system, however, the subsequent states of emergency were general in nature.

Thus, for the states that ordered a special legal regime, it can be noted that during the first wave of the coronavirus pandemic, the legal response of the five states was nearly the same. However, several differences could be found during subsequent periods regarding the reintroduction or the extension of the state of emergency. Hungary is the only country examined where the special legal regime was in effect at the time of the completion of this manuscript, while in Romania, a new type of quasi-special legal regime was adopted and ordered.

In contrast, in Croatia, Poland, and Ukraine, the necessary measures were taken based on the categories laid down in statutory regulation. In these states, the restrictive actions were based on the Law on Civil Protection or on the Act on Infectious Diseases. In addition, in Croatia and Poland, these laws were amended to introduce the necessary emergency measures. The constitutions of these three countries stipulate a special legal regime, which can be declared in a crisis such as the coronavirus pandemic – a state of emergency in Croatia and Ukraine, and a state of natural disaster in Poland. In Croatia, the government adopted different measures, such as creating a special central body to coordinate the crisis management, and the minister of health declared a COVID-19 epidemic on the Croatian

territory pursuant to the Law on the Protection of the Population from Infectious Diseases. In Ukraine, an emergency was established from March 25, 2020, to April 30, 2021, to ensure sanitary and epidemic wellbeing of the population, in accordance with the Civil Protection Code. In Poland, protective and restrictive measures were adopted under the Act on Infectious Diseases and, later, under the newly-adopted COVID Act. On March 13, 2020, a state of epidemic threat was declared on the entire territory of Poland by a ministry regulation. It was cancelled on March 20, 2020, and a state of epidemic was announced, which provided the legal framework throughout the health crisis and was in force at the time of completion of this manuscript.

In most of the countries in this study, to control the coronavirus epidemic quickly and effectively, the government was empowered to take emergency measures. In the countries where special legal regime was introduced, regulatory governance took place. Even in Croatia, Poland, and Ukraine, the government could adopt restrictive measures under the statutory legislation. Romania was the only exception where the president restricted the fundamental rights during the state of emergency with presidential decrees.

While the restriction of fundamental rights during peacetime is a constitutional concern, in a situation where the normal functioning of the state is threatened, such as the health crisis caused by the coronavirus pandemic, fundamental rights might be restricted or even suspended to ensure effective management of the pandemic and are, therefore, necessarily impaired. Whether the states analyzed in this work introduced a special legal order or chose to deal with the pandemic within the normal legal framework, it is evident that in all the states, some degree of restriction of fundamental rights was imposed by the state bodies or the persons empowered to deal with the situation.

To implement exceptional measures restricting fundamental rights, it is necessary to identify the constitutional value or fundamental right that requires protection by restricting other fundamental rights. The nature of the coronavirus pandemic made it necessary to protect human life and health, which necessitated unprecedented and significant restrictions on fundamental rights worldwide. However, the constitutionality of a restriction of fundamental rights requires the application of an aptitude screening, a proportionality screening, and a necessity screening. Based on these, a fundamental right restriction may be imposed only to the extent strictly necessary, proportionate to the aim pursued, and respectful of the essential content of the fundamental right, in addition to the legitimate aim pursued. A further general principle of the limitation of fundamental rights is the prohibition on restricting absolute rights. Although exceptional measures to restrict fundamental rights have, in many cases, generated public policy controversies in the states examined, their legality has, in most cases, been in line with both national and international standards of the constitutionality of restrictions on fundamental rights.



Restrictive measures introduced to protect human life and health, that is, public health as a legitimate aim, have affected a wide range of fundamental rights. It is beyond the scope of this paper to provide a taxonomy of the restrictive measures introduced by individual states; therefore, we refer only to the fundamental rights restricted during pandemic management in almost all the states analyzed. These fundamental rights include:

- the right to personal liberty
- freedom of movement and freedom to choose one's place of residence
- the right to assembly
- the right to conduct a business or a commercial activity
- the right to education

Although restrictive measures, equally and generally, affected people's fundamental rights, they also affected the specific rights of certain social groups. In particular, the elderly and children of compulsory school age, for whom several states introduced specific but similar rules (e.g., a time limit for shopping for the elderly and a switch to digital distance learning in education).

Regarding the extent of the restrictions, there was no significant difference between the intensity of the restrictions imposed by the states examined. In addition, all the states introduced and repealed the restrictive measures, and tightened and relaxed them at approximately the same time. The first restrictive measures were imposed at the time of the outbreak of the coronavirus pandemic in March 2020, while their relaxation or repealment took place in May-June 2020. The reintroduction or tightening of restrictions coincided with the second wave of the coronavirus pandemic, that is, in October-November 2020.

There were intense political debates in almost all the states regarding health crisis management and the need for a special legal regime. At this point, it is important to note that in many cases these debates were about the legal issues related to the extraordinary mandate and were often purely political in nature. The present work does not aim to provide a taxonomic list of the subject matter of the debates, but merely refer to the legally-relevant issues that have been the basis of significant legal-political debates in the states, namely:

- the unjustified introduction of a special legal order or the lack thereof
- questions related to the duration of the special legal order and its extension
- disproportionate and unnecessary restrictions on fundamental rights
- excessive emergency powers conferred upon a person or body and their measures, which are unconstitutional or infringe the criteria of the rule of law
- limited room for maneuver of the legislative bodies

The theoretical debates about the legitimacy of the exceptional measures adopted during pandemic management soon took a practical form by resorting to the courts. If we set aside the debates driven purely by political goals and interests and focus only on the legally-relevant issues, we see that, in many states where a special legal order was introduced, although the room for maneuver and control of the legislature was significantly reduced, the role and responsibility of the national constitutional courts, supreme courts, ordinary and administrative courts, and even ombudsmen for controlling restrictive measures was increased. In some states, the courts corrected and, in other cases, annulled extraordinary measures adopted by the government. However, there are examples where the pandemic management strategy was modified without recourse to the courts, simply because of social pressure and criticism from the political opposition.

In the Czech Republic, Hungary, and Serbia, the argument surrounded the constitutionality of the special legal regime. In Hungary, some scholars explained the unconstitutionality of the state of danger based on the inconsistency between the Fundamental Law and the Act on Disaster Management regarding the determination of the events due to which a state of danger may be declared. Additionally, according to some viewpoints, the declaration of a state of danger was unnecessary since the pandemic could have been managed through the special provisions of the Healthcare Act. In the Czech Republic, a constitutional complaint was filed based on the opinion that the declaration of a state of emergency was not in line with the constitutional order and did not respect the fundamental human rights. However, the Czech constitutional court rejected the complaint. The introduction of a state of emergency was also highly criticized in Serbia as the epidemic was not recognized by the Constitution as “threatening the survival of the state or its people.” Therefore, according to some viewpoints, the coronavirus pandemic could not be the legal basis for a state of emergency. Meanwhile, in Poland, it provoked lively public debate regarding whether the health crisis be considered a natural disaster or a natural catastrophe to be the ground for the state of natural disaster, according to the Act on the State of Natural Disaster. Therefore, some scholars claimed that the government should have declared the state of natural disaster.

Therefore, we can conclude that the response of each country to the coronavirus pandemic was different, and we cannot concretize a uniform European practice that would serve as a model for a similar crisis, and would be an expected, enforceable mechanism for the states.<sup>15</sup> A uniform European practice is also inconceivable because each state, including all the European state, has a different historical background and, as a result, have different public law-constitutional structures. The special legal order and the associated regulatory

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<sup>15</sup> See for more details: Hojnyák and Ungvári, 2021

governance, the limited room for maneuver of the legislature, and the restriction of fundamental rights generate serious public policy debates in each country, whereby, none of the national regulations lack the criteria of the rule of law, as indicated by the results of the research conducted in this study for the countries included.

### **3. Application of economic, fiscal, and monetary instruments during the emergency**

The government measures introduced due to the virus and the fear of a pandemic posed serious challenges for the world economy. Economic crises are not new for researchers; however, the current crisis, its emergence, and its related impact are novel in economic history most comparable to a war situation. The biggest challenge is to deal with the situation as the epidemiological emergency causes serious economic and social damage. In fact, there cannot be a perfect decision, just a less bad one. Special legal restrictive measures reduce the spread of the virus and the burden on the health care system; nevertheless, they also cause economic damage and have social and health implications. In any case, in the policy of governments, in addition to the economic arguments, the protection of human life has been expressed, that is, in the event of an epidemic, the protection against the virus is the primary priority, followed only by the reduction of the economic effects, which is made possible by the established social network in developed countries. However, in developing countries, economic crises can claim lives. According to estimates, the number of people suffering from acute hunger could double due to the crisis.<sup>16</sup>

How does this crisis differ from previous crises? The economy is never dormant; it is always changing. It is either in a cycle of economic growth or downturn. However, according to the economic cycle theories, the root causes may be different, and both exogenous and endogenous explanations are important. The current crisis of the coronavirus pandemic was triggered by an external, out-of-farm factor.<sup>17</sup> This is unique in the modern economic history, but it carries the common features of economic crises – investments drop, consumer spending is cut back, unemployment rises, emissions fall, and the GDP drops.<sup>18</sup> These affect countries

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<sup>16</sup> Botos, 2020, p. 385–388. The author points out that in developing countries people may starve to death due to unemployment caused by the crisis. There are examples of this in economic history, e.g., the 1930s economic crisis. In the context of the current crisis, it is estimated that 420-580 million people could end up in extreme poverty.

<sup>17</sup> Samuelson and Nordhaus, 2012, pp. 389–391. The authors point out that external factors could be war, revolution, population movement, and even scientific innovations.

<sup>18</sup> Samuelson and Nordhaus, 2012, pp. 388–389.

differently depending on their economic and social state and their economic vulnerability. A good example of this is the previous economic crisis of 2008.<sup>19</sup> However, in the current economic crisis, the literature does not explain the short term effects of the crisis or provide any short-term solutions to the crisis.<sup>20</sup> It is, therefore, clear that this crisis has presented new challenges to economic policy makers. The government's restrictive measures have triggered a reduction in demand and caused supply restrictions in the economy. The supply and demand shocks came together. The administrative constraints imposed on consumption and emissions, and the caution caused by the pandemic have had an impact.<sup>21</sup> However, they have manifested themselves to varying degrees in different areas of the economy.<sup>22</sup> In countries where, for example, tourism makes up a significant part of the national economy, the crisis is more pronounced.<sup>23</sup> Economic policy must, therefore, choose solutions for the recovery from the crisis accordingly.<sup>24</sup>

Among the various trends in economics, there is a significant debate about government intervention.<sup>25</sup> In the modern mixed economy, the role of the government sector is significant; however, its extent and the remedies for market failure continue to be debated. In addition to market failures, the failure of government intervention is also noted in the literature.<sup>26</sup> Fiscal and monetary policy instruments played a powerful role in solving the 2008 economic crisis, which the current governments are trying to apply to the current situation of crisis management without waiting for the self-regulatory mechanisms of the market to take effect.<sup>27</sup>

The economic crisis of 2008 was a major challenge for the Economic and Monetary Union. On the one hand, the European Central Bank's liquidity-enhancing, quantitative easing measures for particular asset purchase programs played a prominent role in the EU crisis management. On the other hand, substantial short-term and sustained systemic measures were taken by the System of Economic Governance in Europe. Preventive and corrective

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19 Nagy, 2019, pp. 5–6.

20 Czegezeli et al., 2020, pp. 323.

21 Koppány, 2020, p. 449.

22 Terták and Kovács, 2020, pp. 369–370. Emergency measures for the coronavirus pandemic have hit each sector. The authors point out that accommodation, hospitality, transportation, and retail suffered the greatest losses, along with industry and leisure, arts, and other services.

23 In many areas of the economy, restrictive rules shocked. Airlines, tourism-related hospitality and hotel industries, theatres, the organization of cinemas, concerts, and events faced total restrictive rules. At the same time, other related sectors had to face decline in demand.

24 Muraközy, 2012, pp. 21–44.

25 Muraközy, 2010, pp. 794–795.

26 Stiglitz, 2000, pp. 25–35.

27 Bessenyei, 2020, pp. 181–185.

mechanisms to promote macroeconomic stability were established through intergovernmental treaties.<sup>28</sup>

At the same time, the EU budget was unable to directly deal with the crisis to perform a stabilization function due to the fundamental structural and functional factors.<sup>29</sup> The common budget was balanced with the EU spending its entire revenue from national and common sources.<sup>30</sup> Therefore, in the fiscal policy, the Member States had to face recession. The different public financial position of each Member State gave rise to different fiscal impulses. This increased the diversity between the Member States.

In the current situation, the Member States of the European Union sensed the seriousness of the crisis. However, the varied narratives of the epidemic, which may impact the effective enforcement of economic instruments and dealing with the pandemic, must be considered.<sup>31</sup> The first reaction to the pandemic in 2020 was the imposition of restrictive measures. The introduction of the extraordinary legal order brought closure to the Member States; however, it weakened global international cooperation.

From a budgetary point of view, 2020 marked the end of the EU budget period; therefore, only a small number of resources were available from the EU budget.<sup>32</sup> However, after the first shock, the EU mitigated the economic impact of the pandemic.<sup>33</sup> The biggest step was the Union's joint commitment to borrow and, thus, provide funds to Member States; an unprecedented step.<sup>34</sup> This can be seen as a step toward economic integration, as the Member States stand in economic solidarity by jointly borrowing and agreeing to repay it.<sup>35</sup>

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28 Szegedi, 2019, p. 101. In the decade following the crisis, the EU transformed the European supervisory system for financial markets and began to form a European Banking Union, a complete reform of bailout mechanisms and the deposit insurance system. See Halmai, 2014, 2020a, pp. 277-282. Halmai, 2020b, pp. 259-275.

29 Halmai, 2020a, pp. 20-53.

30 Halász, 2018, pp. 50-54.; p. 149. The author points out that revenues and expenditure had to be balanced in the EU budget so that there was no deficit or surplus planned. If there is a deficit, a budget amendment shall be made to cover it with a loan. According to the legislation, the Commission may table an amendment to the budget if unavoidable, exceptional, or unforeseen circumstances.

31 Shiller, 2020, pp. 9-21. Narrative economics analyzes the role of popular beliefs in economic events. Economic crises and the pandemic created stories that spread like the virus and influenced economic decisions.

32 Szijártó, 2020, pp. 1-13.

33 Balázs, 2020, pp. 5-8. The author points out that, to mitigate the economic impact of the crisis, the restrictive rules on budget deficits and state aid were lifted, and EUR 37 billion was transferred from the Structural Fund to protect against the virus. The European Investment Bank offered investment loans of EUR 200 billion, and the European Commission set up a €100 billion remuneration fund.

34 Csűrös, 2015, pp. 122-155.

35 Botos, 2020, pp. 392-395. The EU has adopted a budget of EUR 750 billion, some of which will be disbursed in the form of aid (EUR 390 billion) while the remaining will supply credit facilities for Member States (EUR 360 billion).

The fiscal policy is affected by the economic crisis and budgetary policy impacts the crisis; thus, the role of the state as an economic regulator is appreciated. The important objectives of the economic policy are to lower unemployment, boost economic growth, stabilize the economy, and lower inflation.<sup>36</sup> With these objectives, the governments are managing the consequences of the crisis and reducing its adverse effects on the economy. The instruments of fiscal policy affect the economy in connection with the budgetary rules. These instruments can be approached from two aspects. One can be a discussion “about both the indirect and direct instruments,”<sup>37</sup> while the other can be about the “assets that affect budget revenues and expenditures.”

The crisis had a dual impact on the economies and budgets of the countries analyzed in this study. On the one hand, revenues decreased, while on the other hand, expenditure increased because of the aid programs. As a result, the budget deficit increased, which was made possible by the EU legislation for the EU countries.

The subsidies were applied directly and indirectly and extended to businesses and employees alike. Direct aid assisted small and medium-sized enterprises, and sector-wide support, such as hospitality and tourism, were also noted. The government pandemic provisions forced these undertakings to either close or made their activities impossible that they suspended operations. A significant part of the subsidies were wage subsidies, which reduced the wage burden on businesses and kept a significant part of the workers in employment, thus, reducing unemployment and allowing resurgence. Several states also improved the situation of unemployed workers by increasing unemployment benefits or extending the period of unemployment benefits. However, there was a state that, by subject right, provided one-time subsidies to its local resident citizens.

Indirect aid was introduced in relation to public burdens and was implemented in a variety of forms. Tax payments were extended along with introduction of exemptions and tax cuts. Businesses and individuals alike were aided by the fact that several countries suspended or abolished tax legal consequences in addition to the suspension of tax enforcement. In addition, several countries tried to boost state and municipal investments to supply orders for economic operators.

In addition to fiscal policy, monetary policy played an important role in managing the crisis. Monetary policy increased the amount of money in the economy through active assets and stimulated investment and economic growth by keeping interest rates low. This was further eased by the reduction of the required reserve ratio and the widespread purchase

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<sup>36</sup> Samuelson and Nordhaus, 2012, p. 570.

<sup>37</sup> Simon, 2019, pp. 31–32. The author represents a specific decision related to the budget under direct instruments, while the indirect instruments have an effect without specific intervention, such as taxes.

of government securities by central banks. Businesses in crisis were aided by interest-free loan programs in some countries, and loan moratorium aided both business and residential sectors. Monetary policy implemented a strong increase in liquidity to promote economic growth following the downturn.

In conclusion, in addition to the instruments that have proven beneficial in earlier crises, states used new instruments to mitigate the crisis, in the field of fiscal and monetary policy. These traditional and new tools proved effective in crisis management. Although the authors analyzed the economic instruments with varying depths in each country chapter, each country used similar instruments in their economic policies, except for one or two cases where smaller individual instruments came into play. However, these smaller instruments did not have any significant relations to the major instruments.

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