

Dimensions of emergency powers in the Czech Republic

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1. Regulation of the emergency powers in the Czech Republic

The regulation of the emergency powers in the Czech Republic can be found solely at a constitutional level. Apart from a state of war, the Czech constitutional system did not contain emergency power provisions. However, the Constitutional Act No. 110/1998 Coll., regarding the Security of the Czech Republic as amended¹ and adopted in 1998, filled this gap in the constitutional regulation. The Act on state security provides an exhaustive list of and comprehensive regulations for special legal regimes in the Czech Republic.

It is important to emphasize that the Czech constitutional system consists of the Constitution of the Czech Republic² and several special Acts, called the Constitutional Acts.³ Pursuant to the provisions of the Constitution, the Constitutional Acts are an integral part of the Czech constitutional system. While the general rules of the emergency powers can be found at a constitutional level, the peacetime rules for preparing for a special legal regime and the rules for crisis management are laid down in the regular Acts.

¹ *Ústavní zákon č. 110/1998 Sb., o bezpečnosti České republiky* (hereinafter referred to as the Constitutional Act on state security). The adoption of Constitutional Acts requires the vote of three-fifths majority (qualified majority) in the Chamber of Deputies of the Czech Parliament, and a three-fifths majority (qualified majority) of the senators of the Upper House of the Parliament of the Czech Republic [Article 39 (4) of the Constitution].

² *Ústavní zákon č. 1/1993 Sb., Ústava České republiky* (hereinafter referred to as the Constitution)

³ Article 112 (1) of the Constitution

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1.1. Cases of special legal regimes

In the Czech legal system, specific cases of emergency powers include state of emergency, condition of threat to the state, and a state of war.⁴

a) State of emergency

Pursuant to the Constitutional Act on state security, the government may declare a state of emergency in cases of natural catastrophe, ecological or industrial accidents, or other dangers that threaten life, health, property, domestic order, or security to a significant extent.⁵ The state of emergency can be considered a flexible provision as it includes the term “other danger.” The specific reason for ordering a state of emergency does not have to coincide with pre-recorded events; however, it must be comparable to the suitability of jeopardizing the protected value.⁶

A state of emergency may be ordered for the entire state or for specified parts.⁷ It may be ordered by the government; however, the Chamber of Deputies of the Parliament of the Czech Republic⁸ must be immediately informed, which may annul the decision of the government.⁹ It is important to note that according to the regulation of the Constitutional Act on state security, at the time of declaring a state of emergency, the government is obliged to determine the fundamental rights to be restricted and the extent of the restriction.¹⁰ However, a special legal regime may be ordered only in accordance with the Charter of Fundamental Rights and Freedoms of the Czech Republic,¹¹ which lays down rules for the restriction of fundamental rights and freedoms.¹² A state of emergency may last for a maximum of 30 days and may be extended with the prior consent of the Chamber of Deputies.¹³ However, the government or the Chamber of Deputies may decide to annul a state of emergency before the expiration of

4 The official Czech translations of the emergency powers are as follows: *nouzový stav* – state of emergency, *stav ohrožení státu* – condition of threat to the state, *válečný stav* – state of war.

5 Article 5 (1) of the Constitutional Act on state security.

6 For more information on this subject see Rychetský et al., 2015

7 Article 2 (2) of the Constitutional Act on state security

8 The Parliament of the Czech Republic is a bicameral chamber parliament, which consists of the Chamber of Deputies of the Parliament of the Czech Republic (*Poslanecká sněmovna Parlamentu České republiky*) (hereinafter referred to as the Chamber of Deputies of the Parliament or the Chamber of Deputies) with 200 members, and the Senate of the Parliament of the Czech Republic (*Senát Parlamentu České republiky*) with 81 senators.

9 Article 5 (4) of the Constitutional Act on state security

10 Sládeček, 2020, p. 273.

11 *Listina základních práv a svobod* (hereinafter referred to as the Charter or Charter of Fundamental Rights and Freedoms).

12 Article 6 (1) of the Constitutional Act on state security

13 Article 6 (2) of the Constitutional Act on state security

the specified period.¹⁴ It is important to note that a state of emergency may not be declared due to a strike held for the protection of rights or of legitimate economic and social interests.¹⁵ It is noteworthy, that the reasons for a concrete possibility of restriction of fundamental rights in case of a state of emergency remains unclear, since it is the least severe form of special legal regime.¹⁶

An immediate state of emergency may be considered a special, accelerated form of state of emergency. The Prime Minister may declare a state of emergency if a delay presents a danger. Within 24 hours of the announcement thereof, the government must either ratify or annul the decision.¹⁷ Nevertheless, the Chamber of Deputies may subsequently annul this measure.

b) Condition of Threat to the State

According to the Constitutional Act on state security, if the state's sovereignty, territorial integrity, or democratic foundations are directly threatened, the Parliament may, on the government's proposal, declare a condition of threat to the state.¹⁸ In contrast to a state of emergency, a condition of threat to the state lacks a demonstrative list of possible threats; only the "object of protection" is regulated.¹⁹ There are no provisions for the restriction of fundamental rights during this time of a special legal regime. However, the Czech scientific literature interprets the provisions of the Constitutional Act on state security²⁰ as provisions creating civil obligations. Based on this reasoning, citizens shall be involved in ensuring the security of the state, which may be seen as an obligation to tolerate the restriction on fundamental rights.²¹

A condition of threat to the state can only be ordered on the motion of the government with absolute majority of the votes in the Chamber of Deputies and the Senate of the Parliament.²² A condition of threat to the state, similar to a state of emergency, can be ordered for the entire country or for certain parts.²³ For the duration of a condition of threat to the state or a state of war, the government may request that the Parliament to deal with government bills in shortened debate. The Chamber of Deputies must adopt a resolution on such bills within 72 hours of submission and the Senate within 24 hours of transmittal by the Chamber of Deputies. If the Senate does not give its view within that period, the bill is deemed as adopted.²⁴

14 Article 6 (3) of the Constitutional Act on state security

15 Article 5 (2) of the Constitutional Act on state security

16 Klíma, 2009, p. 877.

17 Article 5 (3) of the Constitutional Act on state security

18 Article 7 (1) of the Constitutional Act on state security

19 Pavlíček et al., 2011

20 Article 3 (2) of the Constitutional Act on state security

21 Vaníček, 2001, p. 264.

22 Article 7 (1)-(2) of the Constitutional Act on state security

23 Article 2 (2) of the Constitutional Act on state security

24 Article 8 (1)-(2) of the Constitutional Act on state security

For the duration of a condition of threat to the state or a state of war, the President of the Republic does not have the right to overturn the statutes adopted in a shortened debate.²⁵ In addition, the government may not submit a bill for amendment to a Constitutional Act for shortened debate. It should be emphasized that the Constitutional Act on state security contains no provisions for the termination of a condition of threat to the state, except if the declaration contains a deadline for the special legal regime.²⁶ The body entitled to terminate a condition of threat to the state will be the Parliament.²⁷

c) State of War

The rules concerning a state of war were laid down both in the Constitution and in the Constitutional Act on state security. The Parliament decides on the declaration of a state of war, if the Czech Republic is attacked, or if such is necessary for the fulfillment of its international treaty obligations regarding collective self-defense against aggression.²⁸ The concurrence of an absolute majority of all Deputies and Senators is required for the adoption of a resolution declaring a state of war, a resolution granting assent to sending the armed forces outside the territory of the Czech Republic or the stationing of the armed forces of other states within the territory of the Czech Republic, or a resolution concerning the Czech Republic's participation in the defensive systems of an international organization of which it is a member.²⁹ However, neither the Constitution nor the Constitutional Act on state security determines who or which body can initiate the procedure for the declaration of a state of war. Under the provisions of the Constitutional Act on state security, a state of war can only be ordered for the entire country. From the wording of the Constitution, we can deduce the *ultima ratio* nature of a state of war, since it can only be ordered if less intensive measures, such as declaring a state of emergency or a condition of threat to the state, are not appropriate or not sufficient to achieve the desired goal.³⁰ As in the case of a state of emergency and a condition of threat to the state, the government may initiate a shortened debate on bills submitted to the Parliament, and the President of the Republic cannot overturn the adopted laws.

25 Article 8 (3) of the Constitutional Act on state security

26 Article 8 (4) of the Constitutional Act on state security

27 Stejskal, 2017, p. 34.

28 Article 43 (1) of the Constitution

29 Article 39 (3) of the Constitution

30 Article 2 (1) of the Constitutional Act on state security

1.2. Common rules for emergency powers

If during a period of a state of emergency, a condition of threat to the state, or a state of war, the conditions in the Czech Republic do not permit elections as per the deadline prescribed for regular electoral terms, the deadline may be extended by statute, for no longer than six months.³¹ When the Chamber of Deputies is dissolved, the Senate shall decide on the extension or termination of a state of emergency, the declaration of a condition of threat to the state, or a state of war. In addition, it will decide on the Czech Republic's participation in defensive systems of international organizations. Furthermore, the Senate shall be competent to give consent to sending the armed forces of the Czech Republic outside the territory or to the stationing of the armed forces of other states within the territory of the Czech Republic, unless such decisions are reserved to the government.³² The decision to declare a state of emergency, a condition of threat to the state, or a state of war shall be made public by means of mass media and be promulgated like a regular Act.³³

It can be summarized that according to the Constitutional Act on state security, in case of a state of emergency and a condition of threat to the state, the government will be empowered to develop the necessary measures.³⁴ The Constitutional Act on state security also regulates the functioning of the National Security Council of the Czech Republic.³⁵ According to the statutes of the Security Council, its board has nine permanent members, chaired by the Prime Minister, while the board's vice presidents are the Deputy Prime Minister and Minister of the Interior.³⁶ The board also includes the Ministers of Defense, Foreign Affairs, Finance, Industry and Trade, Transport, Health, and Agriculture.³⁷ The meetings may be attended by the Speaker of the Chamber of Deputies, the Speaker of the Senate, ministers who are not permanent members of the Security Council, the administrative authorities, representatives of local and regional governments, and other experts.³⁸ The task of the Security Council is to prepare all the proposals specified by the government that are necessary for the protection of

31 Article 2 (1) of the Constitutional Act on state security

32 securityArticle 2 (1) of the Constitutional Act on state security

33 Article 12 of the Constitutional Act on state security

34 Article 5 and Article 7 of the Constitutional Act on state security

35 National Security Council of the Czech Republic (*Bezpečnostní rada státu České republiky*), hereinafter referred to as the Security Council. The detailed rules related to the operation of the Security Council are laid down in the statutes of the board, which are set out in the first annex of the Decree of a Government no. 544/2014. The statute has been amended several times in recent years, most recently by the Decree of the Government no. 692/2018.

36 Article 3 (1)-(3) of the Statutes of the Security Council. It should be noted that the current Deputy Prime Minister of the Czech Government and the Minister of the Interior are the same person, Jan Hamáček.

37 Article 3 (4) of the Statutes of the Security Council

38 Article 9 (2) of the Statutes of the Security Council

the security of the state. Concerning this, the Constitutional Act on state security also declares that the President of the Republic is entitled to participate in the meetings of the Security Council and has the right to request a report from the Security Council and discuss with its members any matter within its decision-making competence.³⁹ Although the President of the Republic is given additional powers in relation to the Security Council, the President's neutral role can be observed in relation to emergency powers. The President of the Republic is the Commander-in-Chief of the Armed Forces who appoints and promotes generals. However, the countersignature of the Prime Minister or a member of the government appointed by the Prime Minister is required for the validity of his decisions.⁴⁰ It is important to mention that the government may set up a Central Crisis Staff⁴¹ to deal with crisis situations, as a part of the Security Council and function as one of its organizational units. The Central Crisis Staff is founded on the Prime Minister's decision for the primary task of submitting proposals for the Security Council and supporting the government to resolve crises.

Thus, we can see that during a state of emergency and a condition of the threat to the state, the government is empowered to deliver measures to resolve the crisis. As for a state of war, neither the Constitution nor the Constitutional Act on state security has any provisions about the body entitled to govern.⁴²

1.3. State of danger – an extraordinary situation; not considered a special legal regime

In addition to the above-discussed special legal regimes, the Czech law operates the category of “state of danger,”⁴³ regulated in Act No. 240/2000 Coll. on Crisis Management and on Amendments to Certain Acts. However, legal literature on the subject matter considers a state of danger as the fourth type of special legal regime in the Czech Republic. The authors justify this finding on the one hand by the fact that the constitutional regulation in the case of a state of war and a condition of threat to the state is rather incomplete and not clear, and on the other hand, the constitutional regulation of the emergency powers are not considered exclusive in this matter.⁴⁴ For these reasons, we consider it reasonable to describe the state of danger along with the triple division enacted in the Constitutional Act on state security in cases of a special legal regime.

39 Article 9 of the Constitutional Act on state security

40 Article 63 (1) c), g) and Article 3 of the Constitution

41 In Czech language: *Ústřední krizový štáb*

42 Regarding the Czech emergency powers, see also Mareš and Novák, 2019; Kelemen, 2019, pp. 9–35.; Clement, 2020, pp. 207–234.; Khakee, 2009, pp. 32–40.

43 *Zákon č. 240/2000 Sb., o krizovém řízení a o změně některých zákonů* (hereinafter referred to as the Act on crisis management)

44 Kudrna, 2017, p. 163.

A state of danger may be ordered as an emergency measure if people's lives, health, property, or the natural environment are at risk that cannot be prevented by the regular measures of the administrative authorities, regional and local authorities, and integrated rescue system units. However, the intensity of the threat is significant.⁴⁵ A state of danger can be ordered for the whole territory⁴⁶ or a specific part by the regional governors; however, in the case of the capital, Prague, the mayor may order a state of danger. Regional governors should immediately inform the government, the Ministry of the Interior of the Czech Republic, neighboring regions, and any region that may be affected by the threat.⁴⁷ A state of danger may be ordered for up to 30 days; however, regional governors can extend the duration with the consent of the government.⁴⁸ The decision of declaring a state of danger must define the crisis measures required to deal with the danger and the scope of these measures.⁴⁹ The Act on crisis management stipulates that if it is not possible to eliminate the threat by ordering a state of danger, the regional governors must immediately invite the government to declare a state of emergency. The measures ordered by the regional governors shall cease to have effect on the date of the declaration of a state of emergency unless the government decides otherwise. The crisis measures that remain in force shall be deemed to be measures made by the government.⁵⁰ The regional governors or the government may decide to terminate a state of danger before the expiration of the specified period; however, the government may terminate a state of danger even if the conditions set out in the decision declaring a state of danger are not met.⁵¹

2. Restriction of fundamental rights during a special legal regime

Under the Constitution, fundamental rights and freedoms are protected by the judiciary,⁵² thus, guaranteeing the highest level of protection to fundamental rights in the Czech Republic. The Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*)⁵³ which is part of the Czech constitutional order, is a key source of law on this matter as it sets

45 Act on crisis management, Section 3 (1).

46 The Czech Republic is administratively divided into 13 regions and the capital, Prague. The regional governors and the mayor of Prague will be, hereinafter, referred together as regional governors.

47 Section 3 (3) of the Act on crisis management

48 Section 3 (4) of the Act on crisis management

49 Section 3 (2) of the Act on crisis management

50 Section 3 (5) of the Act on crisis management

51 Section 3 (8) of the Act on crisis management

52 Article 4 of the Constitution

53 For more information, see Husseini et al., 2020

out the rules applicable to the restrictions on fundamental rights and freedoms.⁵⁴ The Charter declares that obligations can only be imposed by a form of an Act with respect for fundamental rights and freedoms.⁵⁵ In addition, restrictions on fundamental rights may only take place in accordance with the Charter, must preserve their essential elements, and must not be used for purposes other than those stipulated in the relevant Act.⁵⁶

According to several scientific papers on the subject,⁵⁷ the introduction of an extraordinary measure in a democratic state governed by the rule of law requires the coexistence of several conditions. The most relevant ones are exceptionality, legality, proportionality, purposefulness, inviolability of the foundations of the constitutional order, the existence of control mechanisms, and respect for obligations arising from international law.⁵⁸

The Constitutional Act on state security is very concise regarding the restriction of fundamental rights as it only lays down provisions in relation to a state of emergency. According to the Constitutional Act on state security, at the time of declaring a state of emergency, the government is obliged to determine the fundamental rights to be restricted and the type or extent of the restrictions.

Regarding the restriction of fundamental rights during a special legal regime, the most important source of law is the Act on crisis management, which sets out, in detail, each measure that may be imposed. It must be emphasized that the legislation explicitly regulates only restrictive measures that can be imposed during a state of emergency or a condition of threat to the state. The second chapter of the Act on crisis management regulates the powers of the government and other bodies, particularly of the Ministries of the Interior, Health, Transport, Industry and Trade, and the municipalities, cities, and the local governments with extended powers, and the Czech National Bank (hereinafter referred to as the Central Bank). The Act on crisis management also regulates the powers of the Security Council and the Central Crisis Staff. Given the limitations of the present paper, only the most important measures that can be ordered by the government are presented.

During a state of emergency and a condition of threat to the state, only the following fundamental rights may be limited for the time and to the extent necessary:

- the right to personal integrity and the inviolability of private dwellings
- property rights and rights of use of natural and legal persons
- the right to free movement and housing (for areas at risk or affected by a crisis)

54 Stejskal, 2017, p. 47.

55 Article 4 (1) of the Charter

56 Article 4 (2) and (4) of the Charter, for more, see Orava, 2015, p. 54.

57 Concerning this, see Dienstbier, 2016, pp. 26–30.; Klíma, 2012; Ramraj and Guruswamy, 2011, pp. 91–95.; Scheppele, 2010, p. 178.

58 Dienstbier, Derka and Horák, 2020, p. 421.

- the right of assembly (in areas at risk or in crisis)
- the right to conduct a business (in the context of activities that could jeopardize, disrupt, or potentially impede the effective implementation of crisis measures)
- the right to strike, if it could lead to the interruption or impossibility of rescue and liquidation work.⁵⁹

The Act on crisis management also exhaustively lists the measures that the government may order during a state of emergency. This category includes, in particular, the following restrictive measures: evacuation of persons or property from a specified area; prohibition of entry, stay, and movement of persons to specified areas; and ordering mandatory work.⁶⁰ The government has the right to take measures during a state of emergency to protect state borders and ensure the stay of foreigners or stateless persons, and, in this respect, deploy the armed forces to ensure the implementation of the crisis measures. In addition, the government may impose bans on the management of public funds and payment transactions during a state of emergency.⁶¹

The Act on crisis management sets out measures that may be ordered during a condition of threat to the state. A majority of these measures can be ordered during a state of emergency as well.⁶² However, the Act emphasizes that in addition to the measures already mentioned in connection with a state of emergency, the government may restrict the entry of persons to the country who have not obtained Czech citizenship; restrict the possession of firearms and ammunition; and control the trade of the explosives, nuclear materials, ionizing radiation sources, hazardous chemicals, biological materials, and genetically modified organisms.⁶³

3. Practical cases of promulgation of a special legal regime

We find practical examples of a state of emergency, while a condition of threat to the state and a state of war have not been declared till date.⁶⁴ However, within the scope of these examples, we distinguish between cases where a state of emergency was assigned to the entire

⁵⁹ Section 5 of the Act on crisis management

⁶⁰ Section 6 (1) of the Act on crisis management

⁶¹ Section 6 (3) of the Act on crisis management

⁶² On this point, the Act on crisis management refers to the measures that may be ordered in a state of emergency, which are set out in Section 6 (1) and (3) and Section 7.

⁶³ Section 7 of the Act on crisis management

⁶⁴ For the first time in the history of Czechoslovakia, which was established in 1918 and split into the Czech Republic and Slovakia in 1993, a state of war was formally declared during World War II. In 1941, Edvard Beneš, the emigrating Czechoslovak president, declared that Czechoslovakia was at war with Nazi Germany and Hungary, as these two countries had violated the sovereignty of the Czechoslovak state.

country, and where it was ordered to specific parts of the state. In the following cases, a state of emergency was ordered to a specific part:

- The floods of August 2002 led to a crisis in several regions of the country, which posed a significant threat to people's lives, physical integrity, and security of property in the affected regions. As a result, former prime minister, Vladimír Špidla declared a state of emergency for five regions.⁶⁵
- The floods of April 2006 led to the government declaring a state of emergency in seven regions.⁶⁶
- The hurricane of January 2007 led to the government declaring a state of emergency.⁶⁷
- The floods of June 2013 resulted in the government declaring a state of emergency in six regions and the capital, Prague.⁶⁸

It is evident from these cases that a state of emergency was declared during natural disasters, which endangered people's lives, integrity, and security. The resolutions of the government or the Prime Minister precisely define the fundamental rights to be restricted and their extent. For example, the right to property, free movement and residence, and assembly were restricted to the extent necessary to deal with the crisis. The right to conduct a business or to continue a business were also restricted if the holder of that right endangered, disrupted, or hindered the implementation of the crisis measures. There are no public debates, court judgments, or decisions of the Constitutional Court of the Czech Republic⁶⁹ in connection with the above-mentioned cases.

For the first time in the history of the modern-day Czech Republic, a state of emergency was introduced for the whole territory in 2020 in connection with the coronavirus pandemic.⁷⁰ During the initial phase of the pandemic, the Minister of Health introduced emergency measures based on the provisions of Act no. 258/2000 on the protection of public health.⁷¹ Following this, on March 12, 2020, the government introduced a special legal regime

65 *Rozhodnutí předsedy vlády č. 373/2002 Sb.* (Resolution of the Prime Minister no. 373/2002.). A state of emergency lasted from August 12, 2002 to August 22, 2002.

66 *Rozhodnutí vlády č. 121/2006 Sb.* (Resolution of the government no. 121/2006). A state of emergency lasted from April 2, 2006 to April 19, 2006.

67 *Rozhodnutí vlády č. 11/2007 Sb.* (Resolution of the government no. 11/2007). A state of emergency lasted from January 25, 2007 to February 5, 2007.

68 *Rozhodnutí vlády č. 140/2013 Sb.* (Resolution of the government no. 140/2013). A state of emergency lasted from June 2, 2013 to June 28, 2013.

69 *Ústavní soud České republiky* (hereinafter referred to as Constitutional Court or the Czech Constitutional Court).

70 Hojnyák and Ungvári, 2020, pp. 125–128.

71 Section 80 (1) g) legally authorizes the Minister of Health to establish emergency measures (*mimořádné opatření*) in the event of an epidemic, while section 69 (1) lists the types of measures that may be ordered in the event of an epidemic or imminent threat thereof.

and declared a state of emergency for the entire country.⁷² According to the Constitutional Act on state security, the government may declare a state of emergency in cases of natural catastrophe, ecological or industrial accidents, or other dangers that, to a significant extent, threaten life health, property or domestic order, or security. During a state of emergency, three types of legal instruments were used to deal with the consequences of the pandemic: Acts, government measures (resolutions of the government), and emergency measures issued by the Minister of Health.

The declaration of a state of emergency gave the government emergency powers to adopt rapid and effective measures to deal with the coronavirus pandemic and restrict fundamental rights.⁷³ A state of emergency was ordered for a maximum of 30 days. Post two extensions, the state of emergency finally ended on May 17, 2020 after 66 days; however, maintaining increased hygiene and health standards was made mandatory. The second wave outbreak was predicted by experts in October 2020. Unfortunately, it arrived much earlier than expected, prompting the government to declare a state of emergency again on October 5, 2020, which was extended several times and remained in force until February 14, 2021. On the following day (February 15, 2021), the government declared a state of emergency once again, which lasted for 12 days, until February 26, 2021. A fourth state of emergency was put in force from February 27, 2021 to April 11, 2021. However, since then, until the closing of this manuscript, the Czech government has not declared any more special legal regimes.⁷⁴ Certain public debates arose in this regard. Several relevant cases came to light, focusing on the alleged unconstitutional measures of the government and the violation of the rule of law. The complaints brought to the Constitutional Court were regarding the introduction of emergency powers and seeking the annulment of government measures. These complaints referred, in particular, that a state of emergency was ordered in an unconstitutional manner and the provisions of the restriction of fundamental rights, in several cases, were incompatible with the criteria of proportionality and were not in accordance with the Constitution and the provisions on the restriction of the fundamental rights contained in the Act on crisis management.⁷⁵ In the present paper, we briefly describe the following cases.

On March 26, 2020, a Czech lawyer, David Zahumenský filed a constitutional complaint with the Czech Constitutional Court. He based his complaint 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 requirements. As a result, Zahumenský demanded

72 Sova, 2020, p. 298.

73 Venice Commission, 2020, IV.D. 55. and 58.

74 Syllová, 2020, pp. 19–21.

75 Hojnyák and Ungvári, 2020, pp. 134–136.

the annulment of these measures. The Constitutional Court rejected the complaint for several reasons:⁷⁶

- regarding the resolution of the government to declare a state of emergency, the Constitutional Court has no jurisdiction to judge its constitutionality
- in case of crisis measures, the complaint was not submitted by the entitled person
- for measures of the Minister for Health, the complaint was rejected because certain measures of the Minister had already been repealed.

Following the unfavorable decision of the Constitutional Court, Zahumenský and his wife appealed to the European Court of Human Rights. Zahumenský's wife, Vendula Zahumenský, on behalf of her husband, just before filing the complaint to the Constitutional Court, filed a lawsuit with the Municipal Court of Prague on March 17, 2020,⁷⁷ in which she objected to certain measures issued by the Minister of Health, certain crisis measures issued by the government, and the government decision to declare a state of emergency. In her complaint, she demanded the annulment of the measures. The Municipal Court of Prague dismissed the lawsuit on April 28, 2020. As a result, Zahumenský and his wife filed a complaint with the Supreme Administrative Court of the Czech Republic seeking the annulment of the decision of the Municipal Court of Prague. Their application was rejected.⁷⁸

On April 23, 2020, the Municipal Court of Prague annulled four emergency measures taken by the Czech Minister of Health in connection with the coronavirus pandemic, which restricted the free movement of citizens and the pursuit of their business and economic activities.⁷⁹ According to the court, the measures were illegal because no minister had the right to take them. Such decisions can be made solely by the government under the Act on crisis management.⁸⁰

During the second wave, the Constitutional Court rejected two more constitutional complaints⁸¹ in November 2020 on formal grounds regarding imposing a state of emergency and restrictive measures. According to the information available on the official website of the Constitutional Court, the complaints were not submitted by authorized persons and were, therefore, rejected for formal reasons.⁸²

76 Decision of the Constitutional Court of the Czech Republic no. ÚS 8/20.

77 Case no. 10 A 35/2020.

78 Verdict no. 2 As 141/2020.

79 Hejč, 2020, p. 185.

80 Růžička, 2020, p. 549.

81 Decisions of the Constitutional Court of the Czech Republic no. ÚS 99/20 and no. ÚS 100/20

82 In this regard, see the announcement on the official website of the Constitutional Court of the Czech Republic: www.usoud.cz/aktualne/ustavni-soud-odmitl-dve-stiznosti-proti-usnesenim-vlady-o-vyhlaseni-nouzoveho-stavu-ao-prijeti-krizoveho-opatreni (Accessed: 15 December 2020)

4. Economic effects of the coronavirus pandemic: fiscal and monetary tools for crisis management

Like other countries of the world, the economic crisis resulting from the coronavirus pandemic had serious economic consequences in the Czech Republic. In the following section, we briefly analyze the fiscal and monetary measures ordered by the state to mitigate the effects of the economic crisis.⁸³

The main macroeconomic indicators in the Czech Republic changed because of the coronavirus pandemic. The table below compares the macroeconomic data for 2019, which was unaffected by the pandemic, with 2020, the first year of the pandemic.

<i>The Czech Republic</i>	2019	2020
Growth of the real GDP (Percentage change compared to the previous year)	3.0 %	-5.8 %
General government gross debt (As a percentage of GDP)	30.3 %	38.1 %
Balance of the central budget (As a percentage of GDP)	0.3 %	-6.2 %

Table 4

Macroeconomic analysis of the Czech Republic (2019–2020)

Source: Authors' compilation based on data provided by the Czech Statistical Office⁸⁴ and Eurostat⁸⁵

As can be seen from the statistics, the economic growth⁸⁶ in the Czech Republic has fallen sharply due to the coronavirus crisis. Meanwhile, the government debt to GDP ratio⁸⁷ increased by almost 8%, while the budget-to-GDP ratio,⁸⁸ after a minimum budget surplus of 0.3% in 2019, exceeded by 6%. In 2020, the Parliament amended the central budget deficit three times, eventually raising the original deficit target of CZK 40 billion to a record CZK 500 billion. Therefore, it can be concluded that the deteriorating economic data is a consequence

83 The list of economic measures ordered by the government can be found at the official website of the Government of the Czech Republic: <https://www.vlada.cz/en/media-centrum/aktualne/measures-adopted-by-the-czech-government-against-coronavirus-180545/#economic> (Accessed 31 May 2021)

84 The database of the Czech Statistical Office is available in English at <https://www.czso.cz/csu/czso/ari/notification-of-government-deficit-and-debt-2020-first-notification-data-notified-by-eurostat> (Accessed 31 May 2021)

85 The Eurostat database is available at <https://ec.europa.eu/eurostat/en/web/main/data/database> (Accessed 31 May 2021)

86 According to Eurostat, the real GDP growth compared to the EU-27 was 1.6% in 2019 and -6.1% in 2020.

87 According to Eurostat, the ratio of general government gross debt to GDP in the EU-27 was 77.5% in 2019, while it was 90.7% in 2020.

88 According to Eurostat, the central budget deficit in the EU-27 was -0.5% in 2019 and -6.9% in 2020.

of the economic effects of the coronavirus pandemic and the crisis measures taken to mitigate them. However, these macroeconomic data show that the Czech economy was more resilient to the negative impact of the financial crisis during the analyzed period compared to the average economic performance of the 27 Member States of the European Union.

The Czech National Bank took important monetary policy measures to mitigate the effects of the crisis and support the Czech economy. One of the first decisions was to cut key interest rates in several steps. To strengthen the stability of the financial market, the Act on the Czech National Bank was also amended, which relaxed the restrictions on open market transactions. As a result of the amendment, which was in line with the regulations of the European Central Bank, the central bank was allowed to trade in assets with a term of more than a year and make transactions with banks, credit unions, and other organizations (such as insurance and pension companies or other institutional investors). In addition, the Central Bank reduced the countercyclical capital buffer for Czech exposures and issued a recommendation to banks and insurance and pension companies to refrain from paying dividends or other measures that could jeopardize the financial and economic resilience of individual institutions during the crisis.

The most significant measure of the Czech government to protect the labor market was the introduction of the “Antivirus program.”⁸⁹ The Antivirus program followed the *Kurzarbeit* scheme. The aim of this program was to financially support the payment of the wages of employees in companies affected by the coronavirus pandemic, depending on the extent of the effect. Under Antivirus “A” program, companies that were forced to shut down due to the restrictive measures received wage subsidies. The state paid wages to 80% of the workers. Under Antivirus “B” program, the state provided wage subsidies to companies whose activities were significantly limited by the pandemic. The state took over 60% of employees’ wages. In addition, the state provided wage subsidies to sole proprietors in the form of a one-off amount of CZK 25,000. The COVID I-II-III loan programs were also launched by the state in cooperation with the Czech-Moravian Guarantee and Development Bank. The interest-free loan program was available to sole proprietors and small and medium-sized enterprises affected by the pandemic.

As the crisis made it difficult to meet tax obligations, several tax relief measures were introduced at the state level. A detailed description of tax relief measures would be beyond the scope of this work; therefore, we only present the most important measures. The government extended the regular deadline for filing tax returns for both natural and legal

⁸⁹ For more information on the Antivirus program, see the information issued by the Ministry of Labour and Social Affairs of the Czech Republic: https://www.mpsv.cz/documents/20142/1443715/03_04_2020_ENG_Antivirus.pdf (Accessed 31 May 2021)

persons. However, the late submission of corporate tax returns or late payment of other tax obligations were not sanctioned by the state. In addition to tax simplifications, tax breaks were introduced for certain types of taxes. As the economic crisis had a negative impact on the budgets and finances of local governments, mainly due to lost or significantly reduced tax revenues, an Act was passed to provide financial support to the local governments.

According to the aforementioned Act, each municipality was eligible for a CZK 1,200 bonus per habitant, which debited the central budget of almost CZK 13 billion. Another important measure was the imposition of a credit moratorium, extended to both banks and non-bank credit providers. Under the credit moratorium, the debtors may, at their discretion, request a suspension of payments for a period of three or six months. The debtors could use this possibility until October 31, 2020. The debtors were obliged to declare to the creditor that they were unable to pay because of the negative economic impact of the coronavirus pandemic. They even did not have to prove the validity of the declaration. Debtors were also protected by the imposition of an eviction moratorium, which was used by tenants who could not pay their rent.

5. Summary

The table below summarizes the most important characteristics of the emergency powers in the Czech Republic.

	State of emergency	Immediate state of emergency	Condition of threat to the state	State of war
Level of regulation	Constitutional (Constitutional Act on state security)			Constitutional (the Constitution and the Constitutional Act on state security)
Reasons for ordering	<ul style="list-style-type: none"> – Natural or ecological catastrophe or industrial accidents – Any other danger that threatens life, health, property or domestic order, or security to a significant extent. 		If the state's sovereignty, territorial integrity, or democratic foundations are directly threatened.	<ul style="list-style-type: none"> – If the state is attacked. – If such is necessary for the fulfillment of international treaty obligations on collective self-defense against aggression.

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	State of emergency	Immediate state of emergency	Condition of threat to the state	State of war
Ordered by	The government, but the Chamber of Deputies may repeal the decision.	The Prime Minister but must be approved by the government within 24 hours; however, the Chamber of Deputies may repeal the decision.	At the motion of the government, an absolute majority of both Chambers of the Parliament.	An absolute majority of both Chambers of the Parliament.
Authorized body	The government	The government, Security Council		No provisions
Practical cases	Yes, see the section titled <i>Practical cases of promulgation of a special legal regime</i> .	It has not been ordered so far.		
Other exceptional situations	State of danger (regulated by the Act on crisis management)			

Table 5
Summary of the emergency powers in the Czech Republic
Source: Authors' compilation

The general rules for the emergency powers can be found only in the Constitution and the Constitutional Act on state security. The Czech system of emergency powers identifies three special legal regimes – state of emergency, condition of threat to the state, and state of war. However, an immediate state of emergency may be considered as a special, accelerated form of state of emergency. For each category, the legislation, adequately and precisely, records the occurrence of conditions and threats that may lead to one of the special legal regimes. In addition, the category of a state of danger appears in the Czech legal regulation, which can be considered as the fourth emergency power. The state of danger, under the Act on crisis management, may be suitable for dealing with a crisis arising from an extraordinary event. During a state of danger, special rights are granted to the state and the local government bodies to deal with the extraordinary situations. Therefore, the state of danger has a close connection with special legal regimes.

Our research shows the dominance of the legislative power, since a condition of threat to the state or a state of war may be ordered by the Parliament, while for a state of emergency and an imminent state of emergency, the Parliament may subsequently annul the decision of the

government or the Prime Minister. The government is the authorized governing body, during a state of emergency and condition of threat to the state; however, the Security Council also appears as a consultative, decision-preparing body during condition of threat to the state. The Security Council, a permanent working group of the government, consists of the Prime Minister and ministers appointed by the government, and its main duty is to prepare the proposals defined by the government necessary to protect the state. However, a shortage of regulation can be observed regarding a state of war as neither the Constitution nor the Constitutional Act on state security stipulate an authorized person or body as in charge. Regarding emergency powers, the role of the President of the Republic is neutral, and the President's powers are limited.

The restriction of fundamental rights during a special legal regime may only take place in accordance with the Charter of Fundamental Rights and Freedoms, which is part of the Czech constitutional order and lays down the rules for the restriction of fundamental rights. The detailed rules are enacted in the Act on crisis management, which specifically sets out the scope for the restriction of the fundamental rights. The Act on crisis management also sets out the form and extent of the restriction, however, only in relation to a state of emergency and a condition of threat to the state.

A condition of threat to the state and a state of war have not been ordered till date. There are several examples of a state of emergency in the Czech Republic. The most recent, national-wide state of emergency was declared four times due to the coronavirus pandemic, and public-political debates have arisen in relation to this event.

As is evident from the above discussion, the Czech legal framework of the emergency powers presents a transparent and clear regulation. The Czech legislation sets out different kinds of threats that could be reasons for ordering a special legal regime, leaving no doubt the special legal regime to be ordered in case of specific occurrences or extraordinary situations. This is also confirmed by the fact that the principle of gradation clearly applies to special legal regimes, based on the intensity of the threat. However, it should be noted, that the Czech regulation on emergency powers is deficient in many aspects, including the shortcomings already mentioned in relation to a state of war.

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