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**EXAMINATION OF THE CONSTITUTIONAL
REGULATION PROMULGATED BY THE NINTH
AMENDMENT OF THE FUNDAMENTAL LAW,
ENTERING INTO FORCE ON JULY 1st, 2023.**

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KÜLÖNLEGES JOGRENDRE VONATKOZÓ ALKOTMÁNYOS
SZABÁLYOZÁS VIZSGÁLATA

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Abstract

In Hungary, in order to effective action against pandemic COVID 19, a state of danger was declared, implementing a special legal order on the entire territory of the country. In the application of the rules of domestic law in force, decision-makers faced a number of contradictions and shortcomings, resulting in the comprehensive, system-level modification of the regulations on the special legal order at constitutional level. The author reveals within the confines of a two-part series of articles the correlation of the special legal order, the defence administration and the military defence, highlighted the role of military logistics in evolving of the defence skills.

In this publication, the author presents the framework of the Hungarian special legal order as well as the antecedents, causes and necessities of the regulating constitutional reform entering into force on July 1st, 2023. She expounds the general characteristics of the set of envisaged rules, analyses its detailed rules and innovations, comparing them with the provisions of the current Fundamental Law. It aims to point out the necessity and the forward-looking character of the reform, entering into force at a later date, marking some of its shortcomings, too. The author's intention is to emphasize that the development of lower-level detailed rules will also be crucial in dealing effectively with future emergencies in our country.

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Absztrakt

Magyarországon a COVID19 járvánnyal szembeni hatékony fellépés érdekében 2020 márciusában sor került a veszélyhelyzet kihirdetésére, ezáltal az ország egész területére kiterjedő hatállyal különleges jogrend valósult meg. A döntéshozók a hazai hatályos szabályrendszer alkalmazása során annak számos ellentmondásával, hiányosságával szembesültek, melynek következtében sor került a különleges jogrendre vonatkozó alkotmányos szintű szabályozás átfogó, rendszer-szintű módosítására. A szerző egy kétrészes cikksorozat keretében feltárja a különleges jogrend, a védelmi igazgatás és a katonai védelem összefüggéseit, kiemelve a katonai logisztika szerepét a védelmi képességek kialakításában.

A szerző ebben a publikációban bemutatja a hazai különleges jogrend jogszabályi kereteit, a szabályozásra vonatkozó 2023. július 1-jén hatályba lépő alkotmányos reform előzményeit, megalkotásának kiváltó okait, szükségszerűségeit. Ismerteti a tervezett szabályrendszer általános jellemzőit, elemzi annak részletszabályait, újításait, összevetve azokat a hatályos Alaptörvényben foglalt rendelkezésekkel. Célja, hogy rámutasson a későbbiekben hatályba lépő reform szükségességére, előre mutató voltára, megjelölve annak néhány hiányosságát is. A szerző szándéka annak kihangsúlyozása, hogy az alacsonyabb szintű részletszabályok kidolgozásának is meghatározó jelentősége lesz abban, hogy a későbbiekben felmerülő rendkívüli helyzeteket eredményes lehessen kezelni hazánkban.

Kulcsszavak: különleges jogrend, Alaptörvény kilencedik módosítása, hadiállapot, szükségállapot, veszélyhelyzet, katonai logisztika

Introduction

The institution of the special legal system in Hungary has a long history. Most recently the terrorist attacks that became more frequent in Europe, and the resulting Sixth Amendment of the Fundamental Law of Hungary drew the attention of the representatives of Hungarian scientific life and public life to the importance of this topic.²

² László, Viktória: Comparative analysis of the domestic regulation of the special legal order, in the period following and immediately preceding the Fundamental Law entered into force. Military Science Review, 2018/4, pp. 366-385.

Over the past decades, a number of outstanding publications³ on this topic have been published in the Hungarian scientific literature. Last year, with the appearance of the coronavirus pandemic, the examination of the regulations in force in Hungary, came into focus again. In order to take effective action against the epidemic, the Government declared the state of emergency (technically, a state of danger),⁴ on March 11, 2020, thus implementing a special legal order in Hungary, with effect in the entire country. It was the first serious “challenge” for the regulation, as in the past, state of danger was declared for completely different types of extraordinary events - floods, red mud disaster -, and these were limited to specific areas of the country, with effect in a few counties.

The static nature of the constitutional and statutory level regulations on the special legal order, including the state of emergency, as well as its weaknesses and contradictions⁵, presented the Government with a number of challenges in the course of effective crisis management, and highlighted the need for system-wide changes. Fulfilling this necessity, on November 10, 2020, the Government submitted the bill T/13647 on the Ninth Amendment of the Fundamental Law of Hungary, to the National Assembly. Following its discussion, the National Assembly

³ Mógor, Judit – Horváth, László: Constitutional limits (guarantees) in the regulation of qualified periods pp. 35-45. <https://nkerepo.uni-nke.hu/xmlui/bitstream/handle/123456789/13140/Alkotm%E1nyos%20korl%E1tok-garanci%E1k-a%20min%20s%EDtett%20id%20szakokr%E1k-a%20szab%E1lyoz%E1sban.pdf;jsessionid=621120DF769C53684A4649F0542FEC64?sequence=1> (28/02/2021); Petrétei, József: Particular features of the constitutional (statutory) regulation concerning qualified periods. In: Ádám, Antal – Cseresnyés, Ferenc – Kajtár, István (ed.): *Studies for the 50th anniversary of the 1956 Revolution and fight for freedom*, Pécs, 2006, pp. 307-319.; Jakab, András – Till, Szabolcs: The special legal order. In: Trócsányi, László – Schanda, Balázs (ed.): *Introduction to constitutional law: The Fundamental Law and the constitutional institutions of Hungary*, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2016, pp. 485-513.; Farkas, Ádám: Thoughts on the terrorist threat, *Szakmai Szemle*, 2016/3, pp. 174-189.; Kiss, Barnabás: Restriction of fundamental rights in a special legal order, in particular emergency measures concerning (criminal) justice. In: Homoki-Nagy, Mária – Karsai, Krisztina – Fantoly, Zsanett – Juhász, Zsuzsanna – Szomora, Zsolt – Gál Andor (ed.): *Festive volume for the 70th birthday of Dr. Prof. Ferenc Nagy*, Szeged, 2018, pp. 555-565.; Muhoray, Árpád: Situations requiring the declaration of emergency and their modern solution in practice. In: Hornyacsek, Júlia (ed.): *Practical experience on the operation of the defence administration in the light of today's challenges* Budapest, Dialóg Campus Kiadó, 2019, pp. 61-85.

⁴ Government Decree 40/2020. (III. 11.) on the Declaration of State of Danger

⁵ the problem of declaring a state of emergency, the issue of duration, the scope of emergency measures that can be introduced, the issue of government coordination

adopted the bill, and on December 22, 2020, the Ninth Amendment of the Fundamental Law was promulgated.⁶ Article 11 of the Ninth Amendment contains a set of rules on the special legal order, which will enter into force on July 1, 2023.

According to a formal statement of reasons, we can talk about a constitutional reform, as the amendment constitutes the modernization and system-wide renewal of the system of rules, concerning the special legal order. The system of special legal cases will be reduced from the current six cases to three cases - state of war, state of emergency and state of danger. By making the regulation more flexible, transparent, adding additional guarantees to the rule and in line with the principle of gradation, the reform „...serves the future development of a more advanced system, that is better adapted to the changing security environment and builds on the experience of crisis management of recent years”.⁷

Following a comprehensive renewal of the relevant provisions of the Fundamental Law, the Parliament adopted T/16221, also planned to enter into force on 1 July 2023. Bill No. on the Coordination of Defence and Security Activities, which can be considered the next stage in the reform process.

The special legal order in general

During the period of a special legal order, governance by decrees takes place: decrees - as defined in a cardinal law - may suspend the application of certain laws, it is possible to deviate from legal provisions and take other extraordinary measures.⁸

⁶ The Ninth Amendment of the Fundamental Law of Hungary. https://www.parlament.hu/web/guest/nyitolas?p_p_id=hu_parlament cms_pair_port-let_PairProxy_INSTANCE_iBWcfkbPabw9&p_p_lifecycle=1&p_p_state=maximized&p_p_mode=view&p_auth=Fo1xARhW&hu_parlament cms_pair_port-let_PairProxy_INSTANCE_iBWcfkbPabw9_pairAction=%2Finternet%2Fcplsql%2Fogy_irom.irom_adat%3Fp_ckl%3D41%26p_izon%3D13647 (13/02/2021)

⁷ Explanations to the Fundamental Law and its Amendments. Explanatory memorandum 2020/161. p. 1894.

⁸ The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285., p 10130. The Fundamental Law of Hungary (Fundamental Law) Article 49(4), Article 50(3), Article 51(4), Article 51/A(4), Article 52(3), Article 53(2)

Contrary to the provisions of the current Fundamental Law,⁹ on the basis of the planned set of rules, after the promulgation of all three special cases of legal order, ***the body entitled to exercise exceptional power shall be the Government.***¹⁰ According to the official justification, „*This is because after the promulgation of the special legal order, it is necessary to ensure fast, operative and politically responsible decision-making, for which the Government appears suitable in the Hungarian constitutional system.*”¹¹

The reform, which will enter into force on 1 July 2023, will retain the ***general guarantee rules*** of the current Fundamental Law¹², which are as follows:

- the application of the Fundamental Law may not be suspended;
- the exercise of fundamental rights - with the exception of the absolute rights - may be suspended or may be restricted beyond the extent specified in the Fundamental Law;
- the operation of the Constitutional Court may not be restricted;
- the special legal order shall be terminated by the body entitled to introduce the special legal order if the conditions for its declaration no longer exist;
- the detailed rules to be applied under a special legal order shall be laid down in a cardinal Act;
- a regulation made at the time of the special legal order shall cease to have effect, upon the termination of the special legal order.¹³

⁹ According to the provisions in force, the centre of power in state of national crisis, is the National Defence Council, in times of emergency, it is the President of the Republic, and in states of preventive defence, unexpected attack, terrorist threat and state of danger, it is the Government.

¹⁰ The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285, p 10130.

¹¹ Explanations to the Fundamental Law and its Amendments. Explanatory memorandum. 2020/161. p 1897.

¹² Fundamental Law, Article 54, Article 49 (5), Article 50 (6), Article 53 (4). As per the current Fundamental Law, in the event of a state of national crisis, the decrees of the National Defence Council shall remain in force upon the termination of the state of national crisis, if the National Assembly extends those Decrees. The planned reform does not include this possibility.

¹³ The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285, p 10130.

To compensate for the Government's exceptional concentration of power, the planned reform adds **additional safeguards** to the rules, uniformly for all special periods of the rule of law, strengthening the controlling role of the President of the Republic and the National Assembly, over the Government. The Government is obliged to continuously inform the President of the Republic, the Speaker of the National Assembly and the Standing Committee of the National Assembly, which has the task and competence according to the subject matter, of its decrees made during the special legal order. In addition, the National Assembly has the right to repeal Government decrees. The repealed decree, with one exception, may not be re-created by the Government with the same content. In an exceptional case, if justified by a significant change in circumstances, the Government shall immediately inform the President of the Republic, the Speaker of the National Assembly and the Standing Committee of the National Assembly with the relevant tasks and powers, about the decree issued with the same content and the reasons for its creation.¹⁴

According to the current Fundamental Law, during a state of national crisis, the custodian of exceptional power, the National Defence Council, shall not be subject to the above obligation to provide information, nor shall the National Assembly have the right to repeal decrees made by the National Defence Council. The control role of the National Assembly over the National Defence Council, is manifested only in the fact that upon the termination of the state of emergency, it is entitled to extend the validity of the decrees of the National Defence Council, concluded during the special legal order.¹⁵

In times of emergency, the President of the Republic shall exercise the exclusive power in accordance with the provisions in force. In order to counterbalance its wide-ranging powers, the National Assembly exercises control: the President of the Republic must immediately inform the Speaker of the National Assembly on the extraordinary measures introduced, and the National Assembly has the right to suspend the application of the extraordinary measures introduced by the President.¹⁶

In a state of emergency, the Government is the body entitled to exercise exceptional power, however, the current rules do not set specific

¹⁴ The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285, p 10130.

¹⁵ Fundamental Law, Articles 48-49

¹⁶ Fundamental Law, Article 50 (4)

counterweights to compensate for the increased power required to deal with emergencies, neither the National Assembly nor the President of the Republic has control functions, except the extension of the validity of decrees made by the Government on the basis of a parliamentary mandate.¹⁷

It can be therefore concluded that, contrary to the provisions of the existing Fundamental Law - where only in a state of emergency, the rules guarantee an adequate level of security in order to compensate for the increased power of the President of the Republic, - the planned constitutional reform establishes a relatively strong control system, covering all special legal orders, in order to compensate for the exceptional power of the Government. The Government has a continuous obligation to provide information on its decrees, and the National Assembly is entitled to repeal the Government's decrees. Among the planned provisions, a new guarantee rule is the obligation of the Government, requiring to take all measures during the special legal order, which guarantee the continuous operation of the Constitutional Court and the National Assembly.¹⁸

While this provision strengthens the role of the National Assembly and the Constitutional Court in the special legal order and is intended to ensure their functioning, the guarantee structure could have been further developed by the legislator by establishing a specific control function for the Constitutional Court, in order to create a wider spectrum security system.

If the **National Assembly is prevented from attending**, the President of the Republic shall be entitled to exercise all parliamentary powers: the announcement of the state of war, the announcement and extension of the state of emergency and the power to authorise the Government to extend the state of danger. The legislator, identifying a previous deficiency¹⁹ in this provision, will also address the question of obstruction of the National Assembly, as a potential problem in an emergency situation, during the emergency period. With regard to all three specific legal orders, the transparent rule system clarifies the

¹⁷ Fundamental Law, Article 53

¹⁸ The Ninth Amendment of the Fundamental Law of Hungary, Article (5); Magyar Közlöny 2020/285, p 10130.

¹⁹ Article 48 (3) of the Fundamental Law regulates the issue of obstruction of the National Assembly, but only in relation to the period of state of national crisis and state of emergency.

spectrum of substitution in the event of obstruction of the National Assembly, but a key question to be determined at constitutional level is missing from the rule of law, which is set out in the current Fundamental Law²⁰: the issue of declaring a state of war. The proposed regulation states that the declaration of a state of war is a parliamentary power²¹, however, it does not cover the event if the National Assembly is obstructed, when this power - as well as all parliamentary powers related to the special legal order - are managed by the President of the Republic.

Based on the official justification: „*The reason for the change is that the role of the President of the Republic, in the jurisdiction related to the introduction and extension of the special legal order, may be legally indispensable in the event of impediment to the National Assembly. However, the jurisdiction related to the declaration of war, shall be kept in the exclusive jurisdiction of the National Assembly, since it has no direct link with the treatment of the circumstances giving rise to the promulgation of the special legal order.*”²²

In the view of the author, taking into account that the declaration of war may be a prerequisite for the deployment of the state of war, there is a need to regulate the substitution in order to prepare for the eventuality that the National Assembly is unable to take a decision on this matter because of the obstruction.

The constitutional reform - in accordance with the regulations in force - determines who, and in what way, under what circumstances, is entitled to establish the fact of obstruction. The Speaker of the National Assembly, the Chairman of the Constitutional Court and the Prime Minister, must unanimously establish the fact that the National Assembly is obstructed, if the National Assembly is not in session, and its convocation encounters an unavoidable obstacle due to the short time and the circumstance giving rise to the promulgation of a special legal order.²³

²⁰ Pursuant to Article 48 (1) (a), and (3) of the Fundamental Law, the state of war can be declared by the National Assembly, or if the National Assembly is prevented from making such decisions, the President of the Republic shall have the right to declare a state of war.

²¹ The Ninth Amendment of the Fundamental Law of Hungary, Article (5); Magyar Közlöny 2020/285, p 10128.

²² Explanations to the Fundamental Law and its Amendments. Explanatory memorandum. 2020/161. p 1899.

²³ The Ninth Amendment of the Fundamental Law of Hungary, Article (5); Magyar Közlöny 2020/285, p 10131.

However, the planned provisions - contrary to the provisions of the current Fundamental Law²⁴ - do not stipulate that the Speaker of the National Assembly, the President of the Constitutional Court and the Prime Minister, beyond establishing the fact of obstruction, shall also unanimously establish the justification of the measures to be introduced. It follows that this obligation will subsequently fall on the President of the Republic, increasing his alternate role, since he will have to decide in his discretion, whether the necessary measures are justified.²⁵

The legislator - similar to the provisions currently in force -²⁶ retains the control role of the National Assembly after the end of its obstruction. At its first meeting after the termination of his impediment, the National Assembly shall decide on the justification and legality of the above decision taken by the President of the Republic at the time of his impediment, and shall review the extraordinary measures applied in the special legal order.²⁷

Contrary to current regulations²⁸ the rules that will come into force in 2023 do not stipulate the proportion of votes required by the members of parliament for its review and decisions, which, in the author's opinion, will be justified in the future.

Based on the description of the above changes, it is clear that we can talk about system-level renewal at the constitutional level, but the transformation of lower-level regulation along similar principles is also extremely important for the reform of the entire set of rules. In the following, each specific case of the special legal order will be examined.

²⁴ Pursuant to Article 48 (5) of the Fundamental Law, the Speaker of the National Assembly, the President of the Constitutional Court and the Prime Minister shall unanimously decide, whether the National Assembly is prevented from acting and the declaration of a state of war, state of national crisis or state of emergency is justified.

²⁵ Declaration of state of war, declaration and extension of state of emergency, and authorization of the Government to extend a state of emergency.

²⁶ Fundamental Law, Article 48 (6)

²⁷ The Ninth Amendment of the Fundamental Law of Hungary, Article (5); Magyar Közlöny 2020/285, p 10131.

²⁸ Pursuant to Article 48 (6) of the Fundamental Law, for such decisions, the votes of two thirds of the Members of the National Assembly shall be required.

State of war

Pursuant to the regulation that will enter into force on 1 July 2023, the National Assembly may declare a state of war in the following cases:

- a) declaration of a war situation or threat of war,
- b) an external armed attack, an act equivalent to an external armed attack, and an imminent threat thereof, or
- c) fulfilment of an allied obligation of collective defence.²⁹

Instead of the state of emergency in force, the legislator lays down provisions for a military-type special legal period under the name of a state of war. It allows its promulgation in three broader groups of cases. It takes over the cases of the current Fundamental Law giving rise to a state of emergency - declaration of a state of war or threat of war³⁰ - and one of the cases justifying the declaration of a preventive defence situation - in order to fulfil an allied obligation³¹ - supplementing the regulation by “an external armed attack, an act equivalent to an external armed attack, and their imminent danger”. The inclusion of the latter case in the constitutional regulation was, in the author’s opinion, necessary and justified, as non-armed threats (such as cyber threats, attacks) which, due to their severity and nature, are comparable to an armed attack. These are of paramount importance among the threats to the security of individual countries.³² At a later stage when creating a lower level of regulations it is advisable to create a broader definition of the war situation and the threat of war, allowing for flexible applicability - the current Fundamental Law contains the concept of a state of war.

The declaration of a state of war requires the vote of two-thirds of the members of parliament, in the same way as the current provision on the state of emergency.³³ According to the new provisions, the Government

²⁹ The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285, p 10129.

³⁰ Fundamental Law, Article 48 (1)a

³¹ From the scope of promulgation regulated on the basis of Article 51 (1) of the Fundamental Law, the reform only takes over the fulfilment of the specific obligation of collective defence.

³² Explanations to the Fundamental Law and its Amendments. Explanatory memorandum. 2020/161, p 1897.

³³ The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285, p 10129.

is the body entitled to exercise exceptional power, while under the current regulations, the power centre is the National Defence Council in an emergency. The Government has a fairly wide range of powers: exercises the rights subrogated by the National Assembly, and decides on troop movements³⁴ - in agreement with the National Defence Council, - but unlike the powers of the National Defence Council, the Government is not authorized to exercise the powers of the President of the Republic.³⁵

State of National Crisis

The law enforcement type special legal order, in accordance with the provisions of the current Fundamental Law, can be promulgated by the National Assembly, with the votes of two thirds of the Members of the National Assembly.³⁶ Under the new provisions, a state of emergency can be declared in the following cases:

- a) an act aimed at overthrowing, subversion of the constitutional order or gaining exclusive power, or
- b) in the event of a severe, unlawful act which poses a mass threat to safety of life and property.³⁷

As per the current regulations, state of emergency can be declared due to armed actions aimed at overthrowing the constitutional order or at exclusively acquiring power, or in the event of serious acts of violence massively endangering safety of life and property, committed with weapons or with instruments capable of causing death.³⁸ Under the new provisions, offence with weapons or armed, or assault with violence, are no longer conditions for the declaration of this case of the specific legal order, as in the case of serious acts endangering the security of life and property on a massive scale, unlawfulness is sufficient to do so. Subversion - in addition to its overthrowing - is now also an

³⁴ On the deployment of the Hungarian Armed Forces abroad or in Hungary, taking part in peacekeeping operations, humanitarian activities on foreign operational areas, and the deployment of foreign armed forces in Hungary, or from the territory of Hungary, and their quartering in Hungary.

³⁵ The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285, p 10129.

³⁶ The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285, pp. 10129-11130.

³⁷ The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285, p 10129.

³⁸ Fundamental Law, Article 48 (1)b

event giving rise for declaration of state of emergency, not included in the current Fundamental Law. With this regulation, the aim of the legislator is to bring the constitutional requirements “up-to-date”, since nowadays there are countless ways of attacking the functioning and stability of individual countries and governments, and which, concerning the danger they represent, can cause the same level of damage as armed or violent attacks. *„These modifications are primarily motivated by the international examples, and potential future offences of changes, applicable for subversive, harmful, offensive purposes, related to critical infrastructure and information technology.”*³⁹

A further significant innovation of the planned reform is that the legislator does not tie the validity of regulations designed to deal with emergencies, to a time limit - as it is typical for the cases of specific legal order in the current Fundamental Law - but the duration of the given specific legal order, in this case, the state of emergency, is defined in 30 days. The possibility to extend by the National Assembly, is stated in both the current regulations, and the ones enter into force in 2023, but the planned regulations include the 30 days duration of the extension, and that the extension of the state of emergency requires the vote of two-thirds of the members of parliament.⁴⁰ By the definition of the duration of state of emergency - and not the validity of regulations established in the state of emergency - and by formulation of more specific requirements for the extension of state of emergency, the legislator made the regulations clearer and more obvious.

Under the title **„Common rules on state of war and state of emergency”**, the reform that will enter into force later will include the general guarantee rule, which is also laid down in the current Fundamental Law:

„During a state of national crisis or a state of emergency, the National Assembly may not dissolve itself and may not be dissolved. During a state of national crisis or a state of emergency, no general elections of Members of the National Assembly may be called or held; in such cases, a new National Assembly shall be elected within ninety days of the termination of the state of national crisis or state of emergency. If the general elections of Members of the National Assembly have already been held but the new National Assembly has not been formed yet, the President of the Republic shall convene the constitutive

³⁹ Explanations to the Fundamental Law and its Amendments. Explanatory memorandum. 2020/161, p 1898.

⁴⁰ The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285, p 10130.

sitting for a date within thirty days of the termination of the state of national crisis or state of emergency.(2) The National Assembly that has dissolved itself or has been dissolved may be convened also by the National Defence Council during a state of national crisis, and by the President of the Republic during a state of emergency.”⁴¹

The planned regulations differ from the current ones that the President of the Republic has the right to convene⁴² the National Assembly that has dissolved itself or has been dissolved, both in state of emergency and in state of war, since in the regulation system of the constitutional reform, the Government is the body entitled to exercise exceptional power, while the National Defence Council is not an independent centre of power. With this modification, the right to convene the National Assembly that has dissolved itself or has been dissolved, is assigned to the President of the Republic, in order to ensure the control mechanisms, serving as guarantees in a specific legal order, do prevail.

Pertinent to state of war and state of emergency, the legislator adopts a new solution - which can be found among the regulations of state of preventive defence and state of terrorist threat, of the current Fundamental Law, in a similar, but in a less regulated form⁴³ - which enables the constitutional level regulation to adapt easier to the accelerated world of the 21st century, and also creates the possibility of immediate action and more flexible application of the regulation. This regulation creates a “transition period”, which lasts from the initiative of the Government to declare a state of war or a state of emergency, until the decision by the National Assembly, on the declaration of these two cases of the specific legal order. In this transition period, the Govern-

⁴¹ The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285, p 10131. Fundamental Law, Article 48 (7)-(8)

⁴² As per Article 48 (8) of the Fundamental Law, the National Assembly that has dissolved itself or has been dissolved may be convened also by the National Defence Council during a state of national crisis, and by the President of the Republic during a state of emergency.

⁴³ As per Article 51 (3) of the Fundamental Law, after initiating the declaration of a state of preventive defence, or a state of terrorist threat, the Government may, by means of decrees, introduce extraordinary measures, but only in a limited area and restricted scope of persons. The current regulations also contain guarantee rules - time-limits for the validity of the decrees, and their dependence from the decision on the promulgation, the obligation of the Government to inform about the measures they have introduced - but in a much narrower range, compared to the planned reform.

ment is entitled to take all necessary measures to address the exceptional situation, by means of government decrees.⁴⁴ Having regard to the fact it is not yet a period of specific legal order - in the absence of its promulgation - the regulations define a number of guarantees, aimed at the balancing of exercising the singular power.

- **Information obligation:** The Government shall continuously inform the President of the Republic, the Speaker of the National Assembly and the Standing Committee of the National Assembly, which has the task and competence according to the subject matter, of its decrees made during the special legal order.
- **Time limit:** the decrees remain valid until the decision on the promulgation of the state of war or state of emergency, but no later than 60 days from the initiation by the Government, in case of a state of war or state of emergency, no later than until the termination of the state of war or state of emergency.
- **Parliamentary control:**
 - The control role of the National Assembly is realized on the one hand by the obligation to provide information on the decrees of the Government.
 - The National Assembly also exercises control over the exclusive power of the Government, by the fact that the National Assembly shall decide on the declaration of a state of war / state of emergency.
 - The exercise of exceptional power is also balanced by the fact that, if a state of war or a state of emergency is not declared, the National Assembly shall constitute a law on the regulatory transition related to extraordinary measures taken in government decrees. According to the official justification, this regulation enables legal certainty and foreseeability, which „*under public law, establishes a legislative obligation for the National Assembly, during which the National Assembly, having regard to the requirement of legal certainty, may consider the content of Government decrees, may establish regulations for the propagation*

⁴⁴ After initiating the state of war or state of emergency, the Government can adopt a decree, which - as defined in a cardinal law - it may suspend the application of certain laws, deviate from statutory provisions, and take other extraordinary measures, to the extent necessary for the immediate action on the circumstance giving rise to the promulgation. The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285, p 10130.

*of those, may repair a restriction of fundamental rights that has taken place, etc.*⁴⁵

- The National Assembly performs another counterbalancing function by having the power to repeal Government decrees. In this case the Government must not establish another decree with the same content as the repealed one. The legislator makes one exception: only if the circumstances changed significantly. The Government is obliged to immediately inform the President of the Republic, the Speaker of the National Assembly and the Standing Committee of the National Assembly, which has the task and competence according to the subject matter, on this decree, and the rationale for its creation.

- **Further guarantees:**

- The planned reform defines among the guarantee rules, that the operation of the Constitutional Court cannot be restricted in this transitional period either. This restraint is one of the general guarantees of the specific legal order, which they considered necessary to be included in the guarantees of the transitional period as well.
- An additional obligation is imposed on the Government by the regulation by defining: The Government shall take all necessary measures to guarantee the continuous operation of the National Assembly and the Constitutional Court.
- The counterbalancing of the exceptional power is also supported by the planned regulation, that the detailed rules, which apply after the initiation of the state of war or state of emergency, by the Government, are defined in a cardinal law.
- The concentration of power is also counterbalanced by including the guarantee in the regulations, which requires, that the emergency measures, adopted by the Government decrees, shall comply with the requirement of proportionality: the application of certain laws can be suspended, it is possible to deviate from legal provisions and take other extraordinary measures, to the extent required for the immediate handling of the exceptional situation.⁴⁶

⁴⁵ Explanations to the Fundamental Law and its Amendments. Explanatory memorandum. 2020/161, p 1899.

⁴⁶ The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285, pp 10130-10131.

Given that the provisions described above can be considered as the first step in a reform process, it is essential that a coherent renewal of the system of rules below the level of the Fundamental Law takes place in order to complete the reform, otherwise the three special cases of legal order effective response may also be questioned.

State of Danger

According to the provisions which will enter into force in 2023, declaration of the state of danger will remain the responsibility of the Government, as it is in the current Fundamental Law, but contrary to that⁴⁷, the circumstance giving rise to promulgation are serious acts endangering the security of life and property, and elimination of their consequences. The legislator states the cases of natural disaster or industrial accident with the expression “in particular” with exemplary nature, as the serious act establishing the promulgation, but not in an exhaustive manner, creating the open regulation, and enabling its flexible application.⁴⁸ In the author’s opinion, the legislative intention behind the regulation is a progressive one, since the coronavirus pandemic highlighted, that currently unknown crisis situations, suddenly and completely revolutionizing the lives of countries and societies, can only be effectively addressed with a changing attitude and flexible regulations.

The planned regulation, as in the case of state of emergency, the duration of the state of danger - and not the temporal effect of the decrees adopted⁴⁹ - is defined in 30 days. Correspondingly to the content of the current Fundamental Law, the reform creates the possibility of an extension based on authorization from the National Assembly, but with more detailed, and therefore clearer regulations. Namely the legislator states, that the National Assembly shall decide on the authorization, by the vote of two-thirds of the members of parliament present. Beyond that, it would have been appropriate to define the duration of the extension - by setting at least an upper time limit - as it happened with the extension of the state of emergency.

⁴⁷ According to Article 51 (1) of the Fundamental Law, in the event of a natural disaster or industrial accident endangering life and property, or in order to mitigate its consequences, the Government shall declare a state of danger.

⁴⁸ The Ninth Amendment of the Fundamental Law of Hungary, Article (11); Magyar Közlöny 2020/285, p 10130.

⁴⁹ As per Article 48 (8) of the Fundamental Law, the decree of the Government shall remain in force for fifteen days.

Conclusion

The emergency situation in Hungary in the spring of 2020, caused by the coronavirus pandemic, and the efforts made to deal with it effectively, drew the attention of scientific and political actors to the need for a comprehensive amendment of the regulations on the special legal order. As a result of this process, the Ninth Amendment to the Basic Law of Hungary was made, which includes, among other things, a comprehensive constitutional reform of the regulation on the special legal order. The system-level renewal has created a flexible regulation by making the rule material simpler and more transparent, with a broader system of concepts, which are offset by the incorporation of additional guarantees. In order to eliminate the over-regulation inherent in the current system of rules, the legislator reduced the number of special legal situations to three cases instead of the current six, namely a state of war of a broader meaning, a state of emergency of a law enforcement nature and a state of emergency. In all periods, the exclusive power is vested in the Government. In order to compensate for the widespread exercise of power, the legislator has introduced a number of new guarantees in addition to the existing safeguards: the Government's obligation to take all necessary measures to guarantee the continuous operation of the National Assembly and the Constitutional Court, the continuous information obligation on the decrees adopted, and the possibility of repealing the adopted decrees by the National Assembly. Filling the previous gap, the system of rules stipulated for all three special cases of the legal order, that instead of the National Assembly, in case of its obstruction, the President of the Republic is entitled to take the necessary urgent decisions⁵⁰.

With the extension of the system of constitutional guarantees and the power of substitution of the President of the Republic to all special periods of the legal order, the regulation has become more uniform and complete. More flexible wording of the facts of each case, as well as the creation of a transitional period, enable the system of rules easier to apply, thus facilitating an effective and efficient response to a new, previously unknown security challenge. The provisions, which will take effect on July 1, 2023, have created a more modern set of rules that

⁵⁰ The President of the Republic has the right to declare a state of war, to declare and extend a state of emergency, and to authorize the Government to extend a state of danger, if the National Assembly is prevented from taking such decisions.

are better adapted to today's changed security environment. It is extremely important that the above-mentioned legislative intention and changed approach in the elaboration of detailed regulations, and the creation of lower-level legal regulation prevails in a similar way and with thoughtfulness, in order to effectively deal with new, unknown, unforeseen and unpredictable crisis situations.

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