



BRILL
NIJHOFF

REVIEW OF CENTRAL AND EAST EUROPEAN LAW
50 (2025) 439–473

— Review of —
Central and East European
— Law —
brill.com/rela

Government by Decree: A Never-Ending Story? Analysis of Hungary's Emergency Legislation (2020–2024)

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Received 1 May 2025 | Accepted 14 October 2025 |

Published online 9 February 2026

Abstract

As of March 2025, Hungary has been under a state of danger – an emergency regime provided for in the Hungarian Fundamental Law – for five years, following its initial declaration in response to the COVID-19 pandemic and its subsequent re-declaration in May 2022 in reaction to the Russia–Ukraine war. With only a brief interruption between June and November 2020, this means that Hungary has effectively been governed under emergency rule for half a decade. The primary aim of this article is to examine the rule of law implications of this prolonged emergency period, with a particular focus on the Government's use of emergency government decrees (EGDs). The first part of the analysis addresses constitutional and rule of law concerns arising from the Government's repeated six-month extensions of the state of danger without providing substantive justification for why the consequences of the war cannot be managed through ordinary legal means. The second part focuses on the scope, content, and legal conformity of EGDs. Once a state of danger is declared, the Government is empowered to regulate virtually any matter by decree, including overriding acts of Parliament. Since March 2020, more than 1,000 EGDs have been issued, derogating over 200 pieces of legislation for varying periods. Although the constitutional framework requires EGDs to address the emergency at hand, the analysis demonstrates that over the past five years, the Government has adopted more than a hundred such decrees with no discernible connection to either the pandemic or the war.

Keywords

government by decree – emergency government decrees – emergency legislation – emergency power – state of danger – Hungary

1 Introduction

When the Hungarian government declared a state of danger¹ on 11 March 2020 in response to the emerging COVID-19 pandemic, few could have anticipated that, five years later, the state of danger would still be in place. Apart from a brief interruption between June and November 2020, Hungary has indeed been governed under emergency rules for almost five years at the time of writing this article. In the meantime, in May 2022, the state of danger due to COVID-19 was replaced by a state of danger due to the Russian invasion of Ukraine of February 2022, which the Government has been continuously extending (most recently in November 2024, until May 2025).² Over the course of these five years, the Government has issued more than a thousand emergency government decrees, affecting a wide range of social and economic domains and, in many cases, overriding laws enacted by Parliament. As we will see, these emergency decrees grant the Government considerable discretion, making it particularly crucial that such authority be exercised only in genuinely exceptional circumstances.

As Szente and Gárdos-Orosz pointed out, “In terms of the political consequences and constitutional implications of the COVID-19 pandemic, the case of Hungary received special attention both in international politics and the media”.³ In their study, they concluded that “the outbreak of the COVID-19 pandemic in March 2020 in Hungary led to the possibility of a continuous, long-term quasi state of emergency with almost unlimited Government rule and very weak if not non-existent institutional control

1 The term “state of danger” is a literal translation of “*veszélyhelyzet*”, the Hungarian term for this specific type of emergency regime. The more common expression “state of emergency” is not used here, as it refers to a different regime under Hungarian law – namely, “*szükségállapot*”, which corresponds to the state of emergency in the traditional sense.

2 In the meantime, following the submission of the manuscript, the Government extended the state of danger until 13 May 2026.

3 Zoltán Szente and Fruzsina Gárdos-Orosz, “Using Emergency Powers in Hungary: Against the Pandemic and/or Democracy?”, in Matthias C. Kettmann and Konrad Lachmayer (eds.), *Pandemocracy in Europe: Power, Parliaments and People in Times of COVID-19* (Hart Publishing, Oxford, 2022) 155.

mechanisms”.⁴ Mészáros, based on the Government’s handling of the epidemic, argued that the Hungarian emergency model can be called an autocratic emergency model in which “the Government’s main aim is to create an emergency regime without real threat”.⁵ Antal has already written of “endless emergency” in 2022, positing that “Orbán regime is committed to the continued maintenance of the exceptional legal order”.⁶ In a similar vein, Halmai wrote on “authoritarian use of emergency power” in his study.⁷ In its 2023 Rule of Law Report, the European Commission noted that “The Government continues to use its emergency powers extensively, which undermines legal certainty and affects the operation of businesses in the single market”.⁸ In addition, political analyses pointed out that the Hungarian government “politicized the war”⁹ while at the same time engaged in a “polyphonic political discourse” concerning Russia’s invasion of Ukraine.¹⁰

The present article does not engage with the broader constitutional or political context of the emergency in Hungary; instead, it focuses on one of the “magic weapons” available in emergency situations: emergency government decrees (hereinafter EGDs). Shortly after the declaration of the COVID-19 emergency, it became evident that the Government was utilising this special regulatory mechanism for matters either entirely unrelated or only tangentially related to pandemic management. While this issue has been

4 *Ibid* 177.

5 Gábor Mészáros, “Carl Schmitt in Hungary: Constitutional Crisis in the Shadow of Covid-19”, 46(1) *Review of Central and East European Law* (2021), 69–90, at 69.

6 Attila Antal, *Hungary in State of Exception: Authoritarian Neoliberalism from the Austro-Hungarian Monarchy to the COVID-19 Crisis* (Lexington Books, Lanham, 2022) 125.

7 Gábor Halmai, “Authoritarian use of emergency power: the case of Hungary”, in Saba Parsa and Françoise Tulkens (eds.), *État de droit: état d’exception et libertés publiques* (Anthemis, Limal, 2022).

8 European Commission, “2023 Rule of Law Report Country Chapter on the rule of law situation in Hungary” SWD(2023) 817 final, 31, available at https://commission.europa.eu/document/download/d69f242b-bd69-4e15-976f-870470b72b55_en?filename=40_1_52623_coun_chap_hungary_en.pdf.

9 Adam Zoltan, “Politicizing war: Viktor Orbán’s right-wing authoritarian populist regime and the Russian invasion of Ukraine”, in Gilles Ivaldi and Emilia Zankina (eds.), *The Impacts of the Russian Invasion of Ukraine on Right-wing Populism in Europe* (European Center for Populism Studies, Brussels, 2023).

10 Tamás Dudlák, “Peace at All Costs: Polyphonic Political Discourse of Hungary in the Russian-Ukrainian War”, *Cambridge Review of International Affairs* (2025), 1–34. <https://doi.org/10.1080/09557571.2025.2498734>.

highlighted in previous studies¹¹ and by civil rights organizations,¹² a comprehensive and systematic analysis of EGDs has yet to be conducted. This paper aims to fill that gap by mapping the key characteristics of the 1,081 EGDs issued between 11 March 2020 and 31 December 2024.

It is almost taken for granted that the declaration of a state of emergency entails a (temporary) augmentation of executive power. As Gross and Ní Aoláin claim, “Emergencies also lead to expansion of (national) government powers and concentration of such powers in the hands of the executive branch of government”.¹³ The authors quote the American historian Clinton Rossiter, who already in 1948 observed that “Crisis government is primarily and often exclusively the business of presidents and prime ministers”.¹⁴ According to Ginsburg and Versteeg, “It is conventional wisdom that emergencies require massive delegation of power to the executive, which is the only branch of government with the information, decisiveness, and speed to respond to crises”.¹⁵ Bjørnskov and Voigt argue that “declaring a state of emergency also has far-reaching consequences for the balance of powers within government: the power of both the legislature and the judiciary are

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- 11 E. g. Imre Vörös, “A felhatalmazási törvénytől az egészségügyi válsághelyzetig és tovább...”, in Fruzsina Gárdos-Orosz and Viktor Olivér Lőrincz (eds.), *Jogi diagnózisok. A COVID-19 világgjárvány hatásai a jogrendszerre* (TK JTI – L’Harmattan, Budapest, 2020); Lilla Rác, “Rendeleti kormányzás Magyarországon járványügyi készülség és a második veszélyhelyzeti kormányzás idején (2020. június 18. – 2021. február 8.)”, in Fruzsina Gárdos-Orosz and Viktor Olivér Lőrincz (eds.), *Jogi diagnózisok II. A COVID-19 világgjárvány hatásai a jogrendszerre* (TK JTI – L’Harmattan, Budapest, 2022); Gábor Mészáros, “How Misuse of Emergency Powers Dismantled the Rule of Law in Hungary”, 57(2) *Israel Law Review* (2024), 288–307, at 288. (All translations from Hungarian into English are by the author of the present work).
- 12 “The opinion of Amnesty International Hungary, the Eötvös Károly Institute, the Hungarian Helsinki Committee and the Society for Civil Liberties on the draft Act XLII of 2022 amending Act XLII of 2022 on the prevention and management of the consequences of armed conflict and humanitarian disasters in Hungary”, available at https://helsinki.hu/wp-content/uploads/2024/02/AI-EKINT-MHB-TASZ_velemeney_veszelyhelyzet_20240229.pdf.
- 13 Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge, Cambridge University Press, 2006), 59.
- 14 Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (Abingdon, Routledge, 2002, first published by Princeton University Press in 1948), 12.
- 15 Tom Ginsburg and Mila Versteeg, “The bound executive: Emergency powers during the pandemic”, 19(5) *International Journal of Constitutional Law* (2021), 1498–1535, at 1499. They, however, partly refute this “conventional wisdom” in their study based on the comprehensive analysis of the worldwide responses to COVID-19.

usually curtailed to the advantage of the executive”.¹⁶ The Venice Commission, while assessing the legal framework of emergencies in a number of countries, takes a similar view: “Normally, the declaration of a state of emergency involves the transfer of additional powers to the executive”.¹⁷ In its so-called Rule of Law Checklist, the Venice Commission also includes the following question: “Are the possibilities for the executive to derogate from the normal division of powers in emergency circumstances also limited in duration, circumstance and scope?”.¹⁸ This indicates that the temporary strengthening of the executive – provided that appropriate limits are in place – can be compatible with rule of law standards. Moreover, it should be emphasized that special legislative procedures are considered legitimate instruments during states of emergency;¹⁹ thus, the fact that the Hungarian legal system permits the issuance of special government decrees during a state of danger is by no means exceptional.

The real problem lies in the mass and routine application of government decrees issued in a state of danger, which has persisted for five years. Accordingly, the primary aim of this study is to explore the rule of law concerns related to EGDs, including an assessment of the extent to which these regulations comply with international standards on law-making. As we shall see, emergency government decrees have played a prominent role in managing both the state of danger declared due to COVID-19 and the one triggered by the Russia–Ukraine war. Therefore, it is crucial to understand how these decrees threaten the principles of law-making under the rule of law. To sum up, the Hungarian case warrants broader attention for two reasons. First, Hungary stands as the only European country – aside from Ukraine – that has continuously maintained a kind of state of emergency for over five years since the onset of the pandemic. (It is also noteworthy that no other country in Europe has responded to the Russia–Ukraine war by declaring a constitutional-level state of emergency.) Second, Hungary’s case is instructive in demonstrating how the Government has, in numerous instances, employed EGDs in an abusive manner as a crisis management tool.

16 Christian Bjørnskov and Stefan Voigt, “Why do governments call a state of emergency? On the determinants of using emergency constitutions”, 54 *European Journal of Political Economy* (2018), 110–123, at 110.

17 Venice Commission, CDL-STD(1995)012-e 17.

18 Venice Commission, *The Rule of Law Checklist*, 22.

19 See e.g. Venice Commission, CDL-AD(2019)015, para. 121.; *Guidelines on Democratic Lawmaking for Better Laws* (OSCE Office for Democratic Institutions and Human Rights, Warsaw, 2023), para. 29–30.

The structure of the study is as follows. First, I outline the transition from the state of danger declared due to COVID-19 to the state of danger based on the war in 2022, emphasising the legislator's failure to provide substantive justification for the repeated six-month extensions of the emergency regime. The core of the study, in the third section, examines the EGDs, analysing their objectives and the statistical background of their enactment. I then review several EGDs whose connection to either COVID-19 or the war is highly questionable, demonstrating the Government's broad use of emergency legislation for diverse purposes. In this context, I also examine how, following the outbreak of the war in February 2022, the Government resorted to the pre-existing pandemic-related state of danger as a legal framework to address the war's consequences. Finally, my analysis of the EGDs concludes with an examination of their justifications, revealing that the legislator provides little to no explanation regarding the objectives behind individual decrees.

The present analysis is based on a comprehensive database containing the 3,160 government decrees promulgated between 11 March 2020 and 31 December 2024, indicating which of them were classified as EGDs. The study therefore contains substantial quantitative material – descriptive statistics, time-series patterns, cross-tabulations by subject matter, and summary measures of legislative derogations – presented in the empirical section and illustrated in the accompanying tables and figures. For the EGDs, I examined the subject matter, the presence or absence of an explanatory memorandum, and whether the regulation provided for any derogation from parliamentary acts. Although the quantitative evidence is central to this study, it is complemented by a qualitative assessment of selected EGDs to capture the contexts in which the powers were abused.

2 Perpetuating the Emergency: From COVID-19 to the Russia–Ukraine War

A comparative analysis of constitutions reveals notable discrepancies in the manner in which public emergency provisions are addressed. While certain constitutions allocate a substantial amount of regulatory attention to the governance of emergency regimes, others exhibit a striking lack of detail or even neglect these issues, offering only brief and ambiguous references to emergency situations and powers.²⁰ Hungary clearly belongs to the former

²⁰ Attila Horváth, “Emergency Regimes in the European Constitutions – A Comparative Overview”, 16(2) *European Journal of Risk Regulation* (2025), 388–404.

category, as the Fundamental Law (the constitution of Hungary) includes a dedicated chapter on emergency regimes and emergency powers, titled “Special Legal Order”.

At the onset of the COVID-19 pandemic in 2020, the Fundamental Law provided for no fewer than six distinct emergency regimes (literally, “special legal orders”), one of which was the declaration of a “state of danger” applicable in such circumstances. At the time, Article 53 of the Fundamental Law stated: “In the event of a natural disaster or industrial accident endangering life and property, or to mitigate its consequences, the Government shall declare a state of danger”. While many countries worldwide introduced some form of state of emergency – making Hungary’s actions far from unusual – the Government’s decision to seek and obtain parliamentary authorization to extend the duration of EGDs²¹ (including those issued in the future) until the end of the state of danger drew significant criticism.²² Instead of seeking authorization from Parliament on a weekly basis, the Government intended to obtain blanket approval for every future decree *in advance*.²³

As the first wave of the pandemic subsided, the Government lifted the state of danger in June 2020, only to reintroduce it in November with the onset of the second wave. Under the provisions of the Fundamental Law then in force, the duration of the state of danger depended on the Government’s decision. Despite the lifting of most epidemiological restrictions by the end of 2021 and the beginning of 2022, the Government did not revoke the state of danger. As discussed in detail in Section 3.4, following the outbreak of the Russia–

21 Under the now-defunct provision of the Fundamental Law [Article 53(3)], EGDs remained in force for 15 days unless the Government extended them with parliamentary authorization.

22 For example, the Authorization Act was compared to Hitler’s Ermächtigungsgesetz of 1933 [Gábor Halmai, “How COVID-19 Unveils the True Autocrats: Viktor Orbán’s Ermächtigungsgesetz”, *Int’l J. Const. L. Blog* (1 April 2020) <http://www.icconnectblog.com/2020/04/how-covid-19-unveils-the-true-autocrats-viktor-orbans-ermachtigungsgesetz/>] and evaluated as a “creeping Coronavirus coup” [Adam Bartha, “A creeping #Coronavirus coup”, *EU Reporter* (30 March 2020) <https://www.eureporter.co/frontpage/2020/03/30/a-creeping-coronavirus-coup/>]. In response, the Government claimed that the Authorization Act provided a suitable guarantee since the law enabled the Parliament to withdraw the authorization before the end of the period of state of danger.

23 Zoltán Nagy and Attila Horváth, “The (too?) complex regulation of emergency powers in Hungary”, in Zoltán Nagy and Attila Horváth (eds.), *Emergency Powers in Central and Eastern Europe: From Martial Law to COVID-19* (Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing, Budapest, 2022); Csaba Gyóry and Nyasha Weinberg, “Emergency powers in a hybrid regime: the case of Hungary”, 8(3) *The Theory and Practice of Legislation* (2020), 329–353, at 329.

TABLE 1 Periods of state of danger from 2020

Period	State of danger
11 March 2020 – 18 June 2020	Due to COVID-19
19 June 2020 – 3 November 2020	None
4 November 2020 – 24 May 2022	Due to COVID-19
25 May 2022 – 31 May 2022	Due to COVID-19 <i>and</i> the Russia–Ukraine war
from 1 June 2022	Due to the Russia–Ukraine war

(SOURCE: OWN COMPILATION).

Ukraine war in February 2022, the Government issued EGDs in response to the war's consequences while formally still citing the state of danger declared due to COVID-19 (!). The next significant development was the amendment of the Fundamental Law in May 2022, which introduced the following addition (in italics) to the provisions on the state of danger:

The Government may declare a state of danger *in the event of an armed conflict, war situation, or humanitarian catastrophe in a neighboring country*, as well as in cases of natural disasters or industrial accidents endangering life and property, and for the purpose of mitigating their consequences. [...]

As is evident, the Government retroactively – three months after the outbreak of the war – created the constitutional basis for declaring a state of danger in response to an “armed conflict, war situation, or humanitarian catastrophe in a neighboring country”. On the very day this amendment to the Fundamental Law was adopted, the Government immediately declared a state of danger due to the war. In a subsequent decree, it officially terminated the state of danger declared for COVID-19, effective as of 1 June 2022. This transition meant that the country shifted seamlessly from a pandemic-related state of danger to a war-related state of danger without any interruption. In fact, both states of danger were simultaneously in effect between 25 and 31 May 2022. Table 1 summarises how emergencies in Hungary have evolved since 2020.

As of 1 November 2022, the Fundamental Law has been subject to further amendments;²⁴ the provisions still in force are as follows:

Article 51

- (1) The Government may declare a state of danger in the event of an armed conflict, war situation or humanitarian catastrophe in a neighbouring country, or a serious incident endangering life and property, in particular a natural disaster or industrial accident, and in order to eliminate the consequences thereof.
- (2) A state of danger may be declared for 30 days.
- (3) Acting on the basis of authorization by the National Assembly [*the Parliament*], the Government may extend the state of danger if the circumstance serving as grounds for the declaration of the state of danger continues to exist.

As can be seen, a state of danger may now be declared for a maximum of 30 days. However, the Government may extend it with the authorization of Parliament. Each extension may last for up to 180 days, and there is no limit on the number of extensions. But why is it necessary for Hungary – uniquely in Europe (excluding Ukraine, of course) – to maintain a state of danger even three years after the outbreak of the war? In principle, the reasons justifying the extension can be found, on the one hand, in the preambles of the parliamentary acts authorizing it, and, on the other hand, in the explanatory memoranda to those acts. A close examination of the last three authorization acts (where Parliament authorized the Government to extend the state of danger) reveals two key observations. First, the laws are essentially identical, with their texts – including the explanatory memoranda – reproduced almost verbatim. Second, it is evident that the legislator’s reasoning lacks substantive content, offering only general and vague references to the harmful consequences of the war. For example, the preamble to Act LIV of 2024 (the most recent authorizing act) reads as follows:

- [1] The Russia–Ukraine war in our neighbourhood has created a humanitarian situation unprecedented since the Second World War, and has significantly altered the European economic landscape. To address the humanitarian disaster and mitigate the consequences of international economic changes, our country must continue to ensure the possibility of developing effective and swift national responses.
- [2] To ensure that all necessary tools are available to assist, support, and accommodate individuals seeking refuge, to prevent the adverse

²⁴ The number of emergency regimes has decreased from six to three (state of war, state of emergency and state of danger).

economic effects that may arise, and to enable the country to overcome the harmful consequences of the war as swiftly as possible, the Government proposes extending the state of danger by an additional 180 days.

The explanatory memorandum to the law primarily outlines the background and includes only a single sentence reflecting the legislator's reasoning:

As the armed conflict and humanitarian disaster in Ukraine and their consequences in Hungary – particularly in the areas of asylum, the economy, and energy – have not changed in the recent period, the extension of the state of danger under Government Decree No. 424/2022 (X. 28.) is justified.

Parliament, in its legislative capacity, thus considers the extension of the state of danger justified at regular six-month intervals, based on the reasoning above. In my view, both the authorization acts passed by Parliament and the government decrees that effectively prolong the state of danger should provide a clear justification for why the Government cannot manage the consequences of the war within the framework of ordinary law, and precisely what circumstances continue to necessitate the state of danger. It is arguably reasonable to suggest that, more than three years after the outbreak of the Russia–Ukraine war in 2022, a permanent legal framework could have been adopted that would render the ongoing state of danger unnecessary. As an opposition MP remarked during the parliamentary debate on the most recent authorization act in October 2024:

From a governmental point of view, it would be worth considering whether there is a legal possibility to go about our daily business not through emergency decrees but by exercising normal, day-to-day governance, because this war could go on for a thousand days or more.²⁵

The Hungarian Government, however, chose a different path: rather than using the state of danger to develop lasting mechanisms for addressing the war's consequences – i.e. to adopt a *modus vivendi* – and subsequently lift it, it opted to institutionalise and perpetuate the exceptional state.

By drafting the explanatory memoranda using a “copy-paste” approach, the legislator renders the justification for maintaining the emergency increasingly

²⁵ Protocol of the National Assembly, 22 October 2024, available at <https://tinyurl.com/3fyn3sz6>.

frivolous. As noted above, each six-monthly authorization act contains the recurring phrase: “As the armed conflict and humanitarian disaster in Ukraine and their consequences in Hungary [...] have *not changed in the recent period*” [emphasis added], which appears to be a gross oversimplification of a complex issue. The legislator makes no effort to substantiate the necessity of repeated extensions. Moreover, the explanatory memoranda provide no clarification as to why the Government consistently seeks to extend the state of emergency by the maximum period – 180 days – permitted under Act XCIII of 2021 on the coordination of defence and security activities (hereinafter CDSAA).

However, the question of how long the state of danger can be maintained in Hungary remains unresolved. Neither the Fundamental Law nor the broader legal framework sets a definitive limit on the number of times it may be extended. The only relevant provision of the Fundamental Law states: “The organ entitled to declare the special legal order [in this case, the Government] shall terminate the special legal order if the conditions for its declaration no longer exist”.²⁶ This implies that the duration of the state of danger lies entirely within the discretion of the Government. As the Secretary of State for the Ministry of Justice emphasized during a parliamentary debate, “the assessment of whether an emergency exists is a matter for the Government and the responsibility of the Government”.²⁷ He also underlined that political oversight of emergency measures lies with Parliament, while constitutional oversight is the responsibility of the Constitutional Court.²⁸ In principle, Parliament could refuse to authorize an extension; however, given the governing parties’ two-thirds majority, such an outcome appears highly unlikely. As for the Constitutional Court, it has consistently adopted a restrained approach when evaluating the constitutionality of emergency measures.²⁹ It is thus unrealistic to expect the Court – whose members were all elected by the current governing majority – to challenge the continued extensions of the state of danger or hold the legislator accountable for vague or overly broad justifications.

In light of the above, it appears that the Government is determined to maintain the state of danger throughout the ongoing war, regardless of its actual impact on Hungary. As a 2024 joint statement by civil rights

²⁶ Fundamental Law Art. 53(4).

²⁷ Protocol of the National Assembly, 22 October 2024, available at <https://tinyurl.com/3ueutjd>.

²⁸ *Ibid.*

²⁹ Fruzsina Gárdos-Orosz, “Confused Constitutionalism in Hungary – New Assessment Criteria for Recognising a Populist Constitutional Court”, 16(2) *Hague Journal on the Rule of Law* (2024), 225–244, at 238–239.

organisations highlights, there is no legal barrier preventing the Government – provided it retains parliamentary support – from maintaining the state of danger for an entire four-year parliamentary term.³⁰

3 Emergency Government Decrees: A Universal Tool?

Among the additional powers granted to the executive during states of emergency are special legislative procedures that enable the executive (typically the government or the head of state) to enact legislation – or to do so in a manner – that would not be possible under the normal legal order. It should be emphasized that such special legislative procedures can be regarded as legitimate instruments in times of emergency,³¹ and accordingly, provisions of this kind are found in the constitutions of several countries.³² As will be demonstrated in the following sections, Hungary conforms to this pattern, as the Government is vested with extensive powers to issue emergency decrees under the state of danger – as well as under the other two special legal regimes.

3.1 *Nature of EGDs*

It is important to note that government decrees form a standard part of the Hungarian legal system, even under normal circumstances. According to the Fundamental Law, the Government may adopt decrees in matters not regulated by an act or on the basis of authorization granted by an act.³³ However, in an emergency, the Government's legislative scope is significantly expanded: under a special legal order, it may adopt decrees that

- suspend the application of certain parliamentary acts,
- derogate from the provisions of parliamentary acts, and
- introduce other extraordinary measures.³⁴

³⁰ Amnesty International Hungary et al., *op. cit.* note 11, 10.

³¹ Venice Commission, CDL-AD(2019)015, para. 121.

³² For example, Article 16 of the French Constitution grants the President extraordinary powers (*pouvoirs exceptionnels*) in the event of a serious and immediate threat to the institutions of the Republic, the independence of the nation, the integrity of the territory, or the fulfillment of international obligations. In Spain, the Government may issue a decree-law (*decreto-ley*) in cases of “extraordinary and urgent necessity” [Art. 86(1)]. The decree-law is also known in Italy (*decreto-legge*), where the Government may resort to it only in situations of extraordinary urgency.

³³ Fundamental Law Art. 15(3).

³⁴ Fundamental Law Art. 53(1).

The CDSAA seeks to impose limits on the powers conferred upon the Government by the Fundamental Law. First, it stipulates that such powers may be exercised “in the interests of the safety of life, health, property and rights of citizens and to guarantee the stability of the national economy”.³⁵ A subsequent provision of the CDSAA specifies the areas in which the Government may issue EGDs:³⁶

The Government shall exercise its powers [*i.e.*, *adopting EGDs*] under paragraph (1)

- a) in relation to personal liberty and living conditions,
- b) in relation to economic freedom and security of supply,
- c) in relation to security restrictions affecting communities and public information,
- d) in relation to the operation of the State and local government,
- e) in relation to the maintenance or restoration of law and order and public security,
- f) in relation to national defence and the movement of persons,
- g) other regulatory matters not covered by points a) to f) directly related to the prevention, management, termination, or remedying of the harmful effects of an event giving rise to a state of war, state of emergency, or state of danger.

Even a cursory glance at this list makes it clear that its scope is so broad that it effectively covers almost every area of regulation. In particular, point *g*) appears to render the authorization virtually unlimited, as with minimal “creativity,” nearly any subject can be linked to the management of a crisis.

The Fundamental Law provides a safeguard by allowing Parliament to repeal an EGD adopted by the Government during a special legal order.³⁷ However, given the governing parties’ two-thirds majority in Parliament, such repeal appears highly unlikely in practice.

3.2 *Statistical Background*

EGDs constitute a specific and distinctive feature of the Hungarian legal system. Since 2020, their sheer number has been so substantial that it has noticeably altered the ratio between different types of legislation (see Figure 1). The figure illustrates the yearly evolution of the number of parliamentary acts and government decrees adopted between 1990 and the end of 2024, as well as the ratio between the two categories.

³⁵ CDSAA Section 80(1).

³⁶ CDSAA Section 80(2).

³⁷ Fundamental Law Art. 53(3).

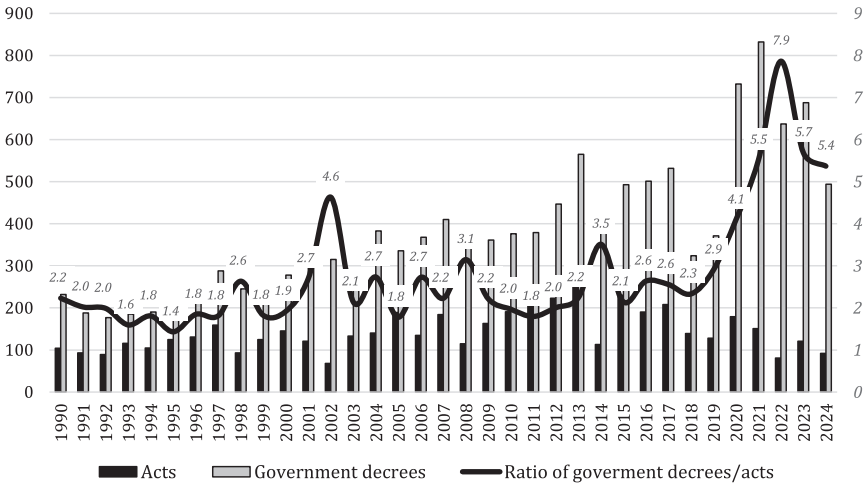


FIGURE 1 Number of acts and government decrees adopted annually and their ratio, 1990–2024 (SOURCE: OWN ELABORATION).

The graph illustrates that emergency legislation has significantly altered the dynamics of law-making, as evidenced by the sharp increase in both the absolute number of government decrees and their ratio relative to acts of Parliament. Prior to 2020, the annual number of government decrees rarely exceeded 500. However, during the years under a state of danger, this figure consistently surpassed 600 (with the exception of 2024). Regarding the ratio of government decrees to acts, before 2020 – save for one exception – there were typically two to three times as many decrees as acts. In contrast, during emergency years, the number of decrees exceeded the number of acts by a factor of four to eight. While these figures certainly lend some support to concerns about “government by decree”, this quantitative aggregation alone does not provide a full picture of the shift in legislative emphasis. A more comprehensive understanding would require in-depth content analysis of the respective legislative instruments.

A particularly intriguing question concerns the proportion of EGDs among all government decrees. Of special interest is whether there is a correlation between the intensity of each crisis (be it the pandemic or the war) and the volume of EGDs issued. Can it be said that, as the severity of the crisis diminishes, the Government also “withdraws” from emergency legislation? The following analysis seeks to illustrate the ratio of EGDs to total government decrees over the past five years, starting from the declaration of the COVID-19 emergency in March 2020. This five-year period is difficult to segment due to its marked heterogeneity. Although some “natural” cut-off points exist – such as

TABLE 2 Phases of states of danger

Phases	Date	Note
1	11 March 2020 – 17 June 2020	First wave of COVID-19 (first period of state of danger)
2	3 November 2020 – 7 February 2021	Second wave of COVID-19 (second period of state of danger)
3	8 February 2021 – 2 July 2021	Third wave of COVID-19 (first third of the third period of state of danger*)
4	3 July 2021 – 23 February 2022	Fourth wave of and decline of COVID-19
5	24 February 2022 – 24 May 2022	From the outbreak of the Russia–Ukraine war to the declaration of state of danger due to the war
6	25 May 2022 – 31 December 2022	From the entry into force of state of danger due to the war until the end of 2022
7	1 January 2023 – 31 March 2023	Q1 2023
8	1 April 2023 – 30 June 2023	Q2 2023
9	1 July 2023 – 30 September 2023	Q3 2023
10	1 October 2023 – 31 December 2023	Q4 2023
11	1 January 2024 – 31 March 2024	Q1 2024
12	1 April 2024 – 30 June 2024	Q2 2024
13	1 July 2024 – 30 September 2024	Q3 2024
14	1 October 2024 – 31 December 2024	Q4 2024

(SOURCE: OWN COMPILATION). *A number of epidemiological restrictions were lifted on 3 July 2021.

the declaration of the initial COVID-19 emergency or the outbreak of war – the duration of these periods varies significantly. While the pandemic period can be relatively clearly delineated by its successive waves, the war follows a different dynamic, making phase demarcation more challenging. In light of these factors, I have defined the following – partly “artificial” – phase boundaries (Table 2):

Turning to the results, it is first worth examining which of the two crises prompted a more intensive use of EGDs by the Government (see Figure 2).

Despite the subjective impression that the Government relied significantly more on emergency legislation during the pandemic, the data reveal no substantial difference between the two emergency periods – at least in terms of the proportion of EGDs. Figure 3 shows how the share of EGDs evolved across the phases described above.

The bar chart indicates that the first wave of the pandemic resulted in a particularly high proportion of EGDs, with their number exceeding that of ordinary government decrees during a period of just over three months. This trend declined in subsequent waves, reaching its lowest point during the six-month period often referred to as the fourth wave and the waning phase of the pandemic. In Phase 5 – spanning from the outbreak of war to the declaration of a state of danger related to the war – the Government once again relied heavily on EGDs. Although the state of danger formally remained tied to the pandemic during these three months (24 February – 24 May 2022), my analysis shows that most EGDs issued during this period clearly addressed the consequences of the war (see Section 3.4 of this article for further details). Following the formal declaration of a war-related state of

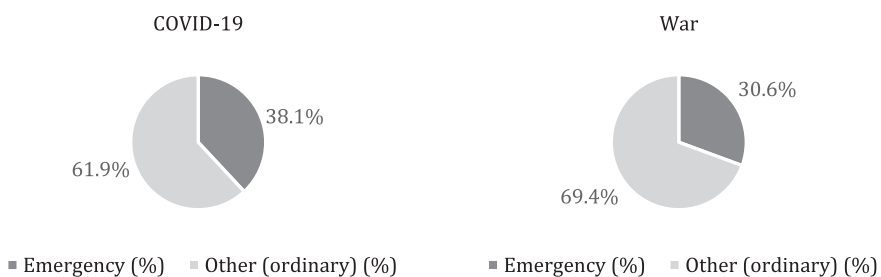


FIGURE 2 Share of EGDs among all government decrees I (SOURCE: OWN COMPILATION). Notes: 1. The pie chart for the COVID-19 period excludes the interval between 18 June and 2 November 2020, during which no state of danger was in effect. 2. The pie chart for the war period covers the timeframe from 25 May 2022 to 31 December 2024.

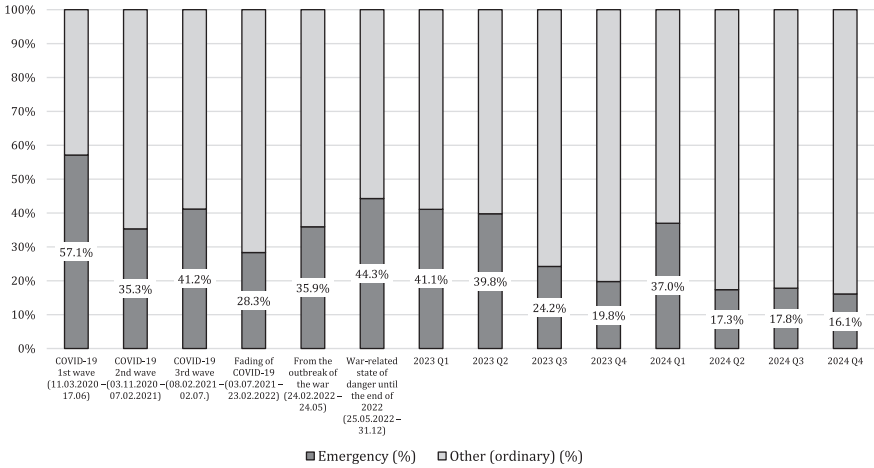


FIGURE 3 Share of EGDs among all government decrees II (SOURCE: OWN ELABORATION).

danger on 24 May 2022, both the number and share of EGDs rose, with the intensity of emergency legislation exceeding that observed during the second and third waves of the pandemic. (Notably, even in the final two months of 2022, EGDs still accounted for 40% of all government decrees.) Starting in 2023, a downward trend became apparent, with only one in five decrees in the last quarter being EGDs. This decline continued, and in the last nine months of the period under review, the proportion of EGDs remained below 20%.

The data series show that the intensity of emergency legislation is closely linked to the severity of the actual crisis: both the pandemic and the war have given rise to a more intensive and gradual legislative process. In addition to examining the relative proportions of EGDs, it is also important to assess which acts have been affected by them. As noted above, the “power” of EGDs lies in their capacity to:

- suspend the application of certain acts,
- derogate from the provisions of acts, and
- introduce other extraordinary measures.

In the course of my research, I have not identified any instances where the Government explicitly suspended the application of a particular act.³⁸ As for

³⁸ In principle, one may raise the theoretical question of whether Act LV of 2018 on the Right of Assembly was effectively suspended during the state of danger declared in response to the pandemic. Although the EGDs did not explicitly stated this, Government Decree No.

the extraordinary measures, their variety over the past five years has been so extensive that a comprehensive quantification appears infeasible. However, it is possible to gain a clearer understanding of the practice of derogation. To that end, I analysed how frequently, and in relation to which parliamentary acts, the Government has made use of its power to derogate. The results show that, during the period under review, 455 out of the 1,081 EGDs contained provisions that deviated from existing acts. In total, the Government derogated from 224 different acts, sometimes repeatedly, resulting in 769 instances of derogation.³⁹

An analysis was then conducted to determine which acts were most frequently subject to derogation (see Table 3).

As shown in the table – particularly in its first half – there is a clear over-representation of acts related to economic and financial matters. The top position of the Electricity Act can be attributed to the Government’s growing use of EGDs to override its provisions since the end of 2021, i.e. during the COVID-19 emergency. The Public Finance Act was frequently targeted in both emergencies, as were the Economic Stability Act and the Bankruptcy Act. Frequent derogations from these acts significantly expanded the Government’s room for manoeuvre in the fields of economy and finance. By contrast, the Minor Offences Act was only overridden during the COVID-19 emergency, allowing for more effective enforcement of protective measures. Somewhat unexpectedly, health-related acts appear only in the second half of the table.

While the data presented above make a valuable contribution to the existing literature on crisis management, it is important to acknowledge the limitations of the analytical method applied. This method does not offer a complete overview of the legislative framework underpinning the Government’s crisis management strategy. One reason for this is that during the emergency period, the Government adopted a number of EGDs aimed at institutionalising a *permanent* derogation from specific acts. A good example is Government Decree No. 526/2022 (XII. 16.) on derogations from Act LXXXVI of 2007 on electricity during the state of danger. Amendments to this decree are no longer included in the above statistics, as they no longer directly reference a specific act, but rather amend the related EGD. Moreover, the database treats all derogations equally, even though the extent and depth of the derogation may vary significantly from one act to another.

484/2020 (XI. 20.) provided that “it is prohibited to organise or hold [...] assemblies” [Section 5(1)] and “it is prohibited to stay in the place of assembly” [Section 5(2)].

39 In cases where an EGD deviated from the provisions of multiple acts (e.g. three), each instance was counted as a separate derogation.

TABLE 3 Parliamentary acts concerned by derogation and number of derogations

Act	Number of derogations		
	COVID-19	War	Total
Act LXXXVI of 2007 on electricity	3	34	37
Act CXCIV of 2011 on public finance	15	15	30
Act CXCIV of 2011 on the economic stability of Hungary	17	12	29
Act XLIX of 1991 on bankruptcy and liquidation proceedings	6	13	19
Act CXVII of 1995 on personal income tax	5	9	14
Act II of 2012 on minor offences	14	0	14
Act XL of 2008 on the natural gas supply	1	12	13
Act I of 2012 on the Labour Code	8	5	13
Act CL of 2016 on the general administrative procedure	8	5	13
Act CCIV of 2011 on national higher education	12	0	12
Act V of 2013 on the Civil Code	4	8	12
Act No V of 2006 on company registration, court proceedings and winding-up proceedings	8	3	11
Act CXXX of 2021 on certain regulatory issues related to emergency situations	6	5	11
Act IV of 1991 on the promotion of employment and unemployment benefits	10	0	10
Act LXXVIII of 1997 on the formation and protection of the built environment	1	9	10
Act LIII of 1994 on judicial enforcement	7	2	9
Act CLIV of 1997 on health care	8	1	9
Act C of 2020 on the healthcare service relationship	8	1	9
Act CXXVII of 2007 on value added tax	3	5	8
Act CCV of 2012 on the status of the Defence Forces	5	3	8

TABLE 3 Parliamentary acts concerned by derogation and number of derogations (*cont.*)

Act	Number of derogations		
	COVID-19	War	Total
Act CL of 2017 on the rules of taxation	4	4	8
Act LII of 2018 on social contribution tax	5	3	8
Act LVIII of 2020 on transitional rules and epidemiological preparedness related to the cessation of the state of danger	8	0	8
Act C of 1990 on local taxes	5	2	7
Act XLVIII of 1993 on mining	3	4	7
Act LXXXIII of 1997 on compulsory health insurance benefits	5	2	7
Act XLII of 2015 on the employment status of professional staff of law enforcement agencies	5	2	7
Act I of 1988 on road traffic	0	6	6
Act XLII of 1994 on the Hungarian Export-Import Bank Joint Stock Company and the Hungarian Export Credit Insurance Joint Stock Company	2	4	6
Act XC of 2017 on criminal procedure	6	0	6
Act XC of 2021 on the Central Budget of Hungary for 2022	2	4	6
Act XXV of 2022 on the Central Budget of Hungary for 2023	0	6	6

(SOURCE: OWN COMPILATION). The table includes only those acts from which the Government has derogated six or more times.

3.3 *What Are EGDs for and What Are They Not for?*

Following the quantitative analyses, we must also ask a somewhat banal yet essential question: *what is the purpose of EGDs?* Article 53(1) of the Fundamental Law (see above) offers no direct guidance on this point. However, considering that Article 51(1) allows the Government to declare a state of

danger in the event of an armed conflict, war situation, or humanitarian catastrophe in a neighbouring country or a serious incident endangering life and property and *in order to eliminate the consequences thereof*, it logically follows that the purpose of EGDs is likewise to address or mitigate the consequences of the actual danger or crisis. Prior to 1 November 2022, the Disaster Management Act (hereinafter DMA) provided an exhaustive list of extraordinary measures the Government was authorized to take under a state of danger (e.g., curfews, placing economic entities under state supervision, evacuation of the population). The entry into force of the CDSAA on 1 November 2022 marked a significant paradigm shift in this regard.⁴⁰ Instead of enumerating specific emergency measures (i.e., the extraordinary actions permitted during a state of danger), the CDSAA granted the Government more generalised regulatory authorization (see Section 3.1). What does this mean from a positive perspective? As highlighted in the expert commentary on the CDSAA, the legislator

eliminated the recurring codification challenge of having to seek ad hoc solutions to each unexpected challenge as it arose, which had resulted in increasingly extensive and overly detailed regulations, thereby disrupting the professional logical coherence of the regulatory framework.⁴¹

From a critical perspective, however, one might argue that “the relevant provisions of the CDSAA are overly general and, as such, are not suitable for effectively constraining the Government’s extraordinary powers of action”.⁴² In any case, the CDSAA explicitly provides a safeguard, stating that the Government may exercise its regulatory powers

to the necessary extent corresponding to the event triggering the state of danger, proportionate to the objective to be achieved, for the purpose of preventing, managing, addressing, or eliminating the event causing the state of danger, as well as mitigating or averting its harmful effects.⁴³

⁴⁰ For the details, see Pál Kádár, “A különleges jogrendi felkészülés és működés általános szabályai – a Vbö. XIII. fejezete”, in Pál Kádár (ed.), *A védelmi és biztonsági szabályozás magyarországi reformja* (Ludovika, Budapest, 2024).

⁴¹ *Ibid.* 321.

⁴² Amnesty International Hungary et al., *op. cit.* note 11, 6.

⁴³ CDSAA Section 80(3).

This provision not only underlines the goal-oriented nature of EGDs but also establishes a necessity–proportionality criterion.

After laying the theoretical groundwork, a crucial question emerges: to what extent did the more than one thousand EGDs issued over the past five years comply with the criteria outlined above – first established by the DMA and later by the CDSAA? While the importance of this question cannot be overstated, providing a precise answer is nearly impossible for two key reasons. First, a content-based analysis of more than a thousand EGDs – covering vastly diverse areas ranging from public procurement to labour regulations and tax policy – represents an almost unmanageable undertaking. Second, the CDSAA’s provisions on emergency lawmaking are formulated so broadly that virtually any government decree, regardless of its subject matter, could be brought under one of the categories *a)–g)* listed above.

In the course of my previous research leading up to this article, I identified at least one hundred EGDs whose connection to the officially declared emergency was difficult to discern – whether upon first reading or even after multiple reviews. It remained unclear how these decrees contributed to “the prevention of a mass epidemic caused by a human pandemic threatening life and property, or the mitigation of its consequences, and the protection of the health and lives of Hungarian citizens”, or to “the mitigation of the consequences in Hungary of the armed conflict or humanitarian catastrophe in Ukraine”. But on what basis can it be asserted that a given EGD lacks any substantive connection to the state of danger? In what follows, I examine a few illustrative examples of such “problematic” government decrees, without claiming to offer an exhaustive account.

One of the most notable EGDs issued during the COVID-19 state of danger designated a special economic zone within the administrative boundaries of Göd, a small town in the Budapest metropolitan area.⁴⁴ The Government’s justification for this measure, introduced just weeks after the pandemic outbreak in Hungary, is set out in Section 1 of the decree: the designation was intended to

ensure the stability of the national economy, mitigate the negative economic consequences of the mass epidemic caused by the COVID-19 infection, protect more than 1,500 jobs endangered by the emergency, and create more than 2,500 new jobs.

44 Government decree No. 136/2020 (IV. 17).

The background to this decision was a conflict between the Samsung corporation and the municipality: while Samsung sought to carry out a major investment in the area, the local authorities opposed the plan. As the then Deputy Secretary of State at the Ministry of Justice explained, “During the economic downturn caused by the coronavirus pandemic, the Government did not want to lose an investment of such scale”.⁴⁵ This EGD illustrates how economic interests not directly tied to the public health crisis were also invoked to justify the use of emergency powers.

A similar rationale underlies the tax benefit introduced for so-called hop-on hop-off sightseeing buses. On 8 May 2023, citing the Russia–Ukraine war, the Government reduced the VAT rate for scheduled hop-on hop-off sightseeing services from 27% to 5%.⁴⁶ It is difficult to imagine another service that, at least at first glance, appears as unrelated to the war as double-decker sightseeing buses. The Minister heading the Prime Minister’s Office justified the tax cut by claiming it would help reduce tax evasion in the service sector and that the lower VAT rate could potentially lead to increased budgetary revenues.⁴⁷

The introduction of the social contribution tax on interest income was likewise justified by budgetary considerations. On 31 May 2023, the Government – effectively amending the Social Contribution Tax Act – imposed a 13% social contribution tax on a significant portion of savings instruments.⁴⁸ At first glance, it is difficult to discern how this measure contributes to “mitigating and addressing the consequences of the armed conflict or humanitarian catastrophe in Ukraine”. However, the above-cited provision of the CDSAA refers to ensuring the stability of the national economy. Accordingly, in theory, this quasi-tax increase can be justified by the goal of boosting state revenues and redirecting household savings toward government securities in support of economic stability. By contrast, the personal income tax relief for mothers under 30,⁴⁹ as well as the family tax benefit for families raising children with chronic illnesses or severe disabilities,⁵⁰ appear to have an even more tenuous connection to national economic stability – although the

45 László Péter Salgó, “A hazai veszélyhelyzeti jogalkotás a kodifikátor szemével”, 6(2) *Fontes Iuris* (2020), 8–18, at 16.

46 Government decree No. 165/2023 (V. 8).

47 Márton Vég, “Döntött a kormány: marad a kamatstop”, *Menedzsment Fórum* (11 May 2023) available at <https://mfor.hu/cikkek/makro/mit-szol-a-kormany-a-24-szazalekos-inflaciohoz-percrol-percre-a-kormanyinforol.html>.

48 Government decree No. 205/2023 (V. 31).

49 Government decree No. 596/2022 (XII. 28).

50 Government decree No. 597/2022 (XII. 28).

CDSAA's reference to "living conditions" [Section 80(2)(a)] could arguably be stretched to encompass such measures.

The connection between the above-mentioned economic, financial, and tax-related decrees and the state of danger – and thus their legal basis – can arguably be justified, albeit with some goodwill. However, numerous EGDs require considerable imagination to discern any link to pandemic- or war-related crisis management. For instance, during the COVID-19 period, the Government issued a decree effectively authorizing the burning of garden waste by delegating the power to regulate air pollution caused by household activities to local municipal councils.⁵¹ Similarly, another EGD adopted during the COVID-19 state of danger concerned the nationalisation of the *in vitro* fertilisation sector, granting specific powers to the National Hospital Directorate-General in relation to asset transfers.⁵² The relevance of these measures to the pandemic-related emergency is far from clear. Comparable doubts arise in connection with an EGD that temporarily overrode Act LXXVIII of 1997 on the Formation and Protection of the Built Environment, allowing the organisers of the 20 August national holiday (primarily the fireworks display) to use certain public spaces in Budapest free of charge until 1 September, in contravention of statutory provisions.⁵³ How this measure was intended to mitigate the consequences of the war is equally questionable. Furthermore, under the pretext of the war-related state of danger, the Government prohibited the liberalisation of taxi fares in the capital.⁵⁴ Later, citing the same justification, it authorized the Szeged-Csanád Diocese to cut down trees on the construction sites of church schools "to the extent necessary for the realisation of the investment".⁵⁵

In certain cases, the suspicion of abuse of emergency legislation becomes even more pronounced in relation to specific EGDs. A particularly striking example was the restriction of teachers' right to strike in February 2022,⁵⁶ which was "naturally" justified by citing the pandemic. As discussed in Section 3.5 of this article, the Government did provide an explanatory memorandum for this particular EGD – an exception to the general practice – yet it made no reference whatsoever to any connection between the right to strike and the pandemic.

51 Government decree No. 549/2020 (XII. 2).

52 Government decree No. 155/2022 (IV. 14).

53 Government decree No. 325/2022 (VIII. 23).

54 Government decree No. 14/2023 (I. 25).

55 Government decree No. 637/2023 (XII. 23).

56 Government decree No. 36/2022 (II. 11).

Equally questionable was the introduction of the concept of a “public hearing without the public”. According to an EGD issued in April 2023, “in view of the armed conflict and humanitarian catastrophe in Ukraine”, public hearings in administrative proceedings could be held without the physical presence of those concerned. The decree stated that “the public hearing may be conducted in accordance with organisational and operational rules, without the personal attendance of the local population or representatives of locally interested organisations”.⁵⁷ The erosion of the institution of public hearings was undoubtedly influenced by the fact that, in some municipalities, local residents had voiced strong opposition to planned battery factories.

This brief overview is by no means exhaustive. Rather than compiling a comprehensive list of “questionable” EGDs, my intention has been to highlight the problems posed by the expansive scope of emergency powers through a few illustrative examples.

3.4 *A “Universal” Emergency? The Transition Period of February–May 2022*

Another issue raised in the introduction is whether the Government is authorized to respond to a crisis (e.g., war) that is unrelated to the original cause (e.g., a pandemic) of the declared state of danger. As noted earlier, both the now-repealed provisions of the DMA and the CDSAA establish the principle of purpose limitation. This principle requires that the Government exercise its legislative powers during a state of danger solely for the prevention, management, resolution of, or mitigation of harmful effects caused by the event that triggered the emergency. The principle of purpose limitation was incorporated into all three Coronavirus Acts (hereinafter CVA).

According to the first CVA, the Government could exercise its extraordinary legislative powers “for the purpose of preventing, managing, resolving, or mitigating the harmful effects of a human pandemic”. In the second and third CVAs, this was expanded to include “addressing the consequences of the SARS-CoV-2 coronavirus pandemic threatening public health and safety, and protecting the health and lives of Hungarian citizens”. In contrast, starting in November 2021 – well before the outbreak of the Russia–Ukraine war – EGDs had already been issued concerning fuel price regulation and matters related to electricity, natural gas supply, and district heating. While it is conceivable that the skyrocketing prices of fuel, gas, and electricity were indirectly and distantly connected to the pandemic, these

⁵⁷ Government decree No. 146/2023 (IV. 27).

decrees might still be justifiable within the aforementioned framework. The true turning point came with the outbreak of the Russia–Ukraine war on 24 February 2022. At that time, the state of danger declared due to COVID-19 was still in effect in Hungary, with the stated aim of “addressing the consequences of the SARS-CoV-2 coronavirus pandemic causing widespread illness and endangering life and property, and protecting the health and lives of Hungarian citizens”. Nevertheless, following the outbreak of the war, EGDs began to be issued that aimed at addressing its consequences, including the partial humanitarian crisis resulting from Ukrainian citizens fleeing to Hungary.

Between 24 February and 24 May 2022, a total of 124 government decrees were issued, 44 of which were EGDs. Based on my analysis, it can be concluded that at least two-thirds of these 44 EGDs clearly responded to the crisis *caused by the war*. Examples include measures supporting the employment⁵⁸ and accommodation of Ukrainian citizens arriving from Ukraine,⁵⁹ as well as childcare services provided for refugee children.⁶⁰ Another subset of the emergency decrees sought to mitigate the economic impacts of the war, such as EGDs related to fuel price caps,⁶¹ subsidies for small rural gas stations to ensure regional supply security,⁶² or restrictions on grain exports.⁶³

While I do not question the legitimacy of these measures, I find it problematic that the Government addressed the consequences *of the war* within the framework of the *pandemic-related* state of danger, formally citing the pandemic as the legal basis. In effect, it seamlessly transitioned from pandemic-related legislation to war-related legislation. In my view, the principles of the rule of law require that extraordinary legislation remain within its defined boundaries – meaning that the legislator must not exceed the authority granted to it. Both the government decree declaring the pandemic-related state of danger and the CVAs clearly outlined the purpose of the emergency and the corresponding decrees: namely, to address the consequences of the pandemic and to protect the health and lives of Hungarian citizens. However, from the end of February 2022 onward, a large number of EGDs were issued that were clearly unrelated to this objective – for instance, supporting rural gas stations or facilitating the employment of

58 Government decree No. 96/2022 (III. 10).

59 Government decree No. 104/2022 (III. 12).

60 Government decree No. 147/2022 (IV. 14).

61 Government decree No. 57/2022 (II. 28).

62 Government decree No. 84/2022 (III. 5).

63 Government decree No. 83/2022 (III. 5).

Ukrainian refugees can hardly be connected to the fight against the COVID-19 pandemic.

The “merging” of the two states of danger is further evidenced by the fact that, in late May 2022, the Government issued a separate decree “transferring” (or reinstating) 37 EGDs originally issued under the pandemic-related state of danger into the wartime state of danger.⁶⁴ Notably, this decree explicitly stated that wherever these “transferred” EGDs referred to the pandemic-related state of danger, such references should also be understood to include the wartime state of danger.

The legislative approach described above reinforces the impression that the Government regarded the pandemic-related state of danger as a kind of “universal” emergency, suitable for addressing entirely different types of crises, including energy supply issues, soaring energy prices, and war. In my view, however, this is inconsistent with the principle of purpose limitation in emergency legislation.

3.5 *What Did the Legislator Intend? In Search of Missing Explanatory Memoranda*

To assess how specific EGDs relate to the declared state of danger, it would seem logical to consult the explanatory memoranda provided by the legislator. In Hungary, Act CXXX of 2010 on lawmaking (hereinafter LA) stipulates that

The preparer of a legislative draft shall attach an explanatory memorandum (or “statement of reasons”) to the draft, which sets out the social, economic, and professional grounds underlying the normative content of the legislation, and outlines the expected effects of the proposed regulation.⁶⁵

However, a ministerial decree issued by the Minister of Justice stipulates that the explanatory memoranda accompanying legislative drafts adopted under a special legal order do not have to be made public.⁶⁶ The Government has certainly made extensive use of this exemption – so much so that, out of the 1,081 EGDs issued during the examined period, I found explanatory memoranda for only 10 (!). Although the above-mentioned decree does not require the Government to provide an explanatory memorandum for EGDs, it does

⁶⁴ Government decree No. 190/2022 (V. 26).

⁶⁵ LA Section 18(5).

⁶⁶ Decree of the Minister of Justice No. 5/2019 (III. 13.) Section 20(2) b).

not prohibit it either (as evidenced by the 10 cases). Thus, in principle, it remains at the Government's discretion whether to prepare and publish such explanations. In my view, offering justifications – even for the more controversial decrees – would significantly enhance clarity. For instance, it would be useful to understand how permitting the burning of garden waste contributes to the fight against the pandemic, or how freezing taxi fares in Budapest helps address the consequences of the war.

While exempting decrees issued under a special legal order from the obligation to provide explanatory memoranda may be somewhat understandable – given that the urgency of such legislation might not always permit strict adherence to justification requirements – it is precisely these EGDs that most warrant explanation. Under special legal orders, the Government's legislative discretion expands significantly, and the usual hierarchy of norms becomes unsettled. In light of this extraordinary authority, it is essential – drawing upon the LA – to outline the social, economic, and professional reasons and objectives that necessitate the regulation. Such transparency would not only enhance the clarity of the legislative process but could also strengthen the legitimacy of the Government's decisions. It is difficult to believe that in approximately 99% of the 1,081 EGDs issued, the Government encountered such extreme urgency that there was no time to provide any justification at all.

Returning to the ten EGDs mentioned earlier that were accompanied by explanatory memoranda, the quality of these justifications varies significantly. For instance, the explanatory memorandum attached to the EGD restricting the right to strike for teachers employed in public education institutions⁶⁷ – adopted during the COVID-19-related state of danger – reads more like a political statement than a justification that meets the requirements set out in the LA. The opening sentence states: “In terms of wages, the left-wing-affiliated trade unions did not organise a strike in 2010 when the Gyurcsány and Bajnai governments [Prime Ministers before Viktor Orbán came to power in 2010] took away one month's salary from teachers”. While the memorandum does later cite the need to prevent “another unlawful strike in the interest of children, for the enforcement of epidemiological regulations, and for the equitable distribution of burdens between schools and parents, as well as the clear legal definition of the conditions of minimum services”, it fails to clarify how restricting the right to strike serves to mitigate the effects of the pandemic or protect the health and lives of Hungarian citizens. A similar issue

67 Government decree No. 36/2022 (II. 11).

arises with the explanatory memorandum accompanying the EGD that extended the applicability of extraordinary dismissals for teachers.⁶⁸ That memorandum makes no reference to how the measure contributes to addressing or mitigating the consequences of the armed conflict or humanitarian catastrophe in Ukraine.

However, there are examples where the explanatory memorandum clearly and coherently outlines the reasons and objectives of the regulation, linking its necessity to the declared state of danger. From this perspective, the EGD on the emergency rules governing public employment relationships⁶⁹ can be considered a “benchmark”, as it effectively connects the rationale for the regulation to the legal framework of the emergency.

It should also be noted that EGDs are not only exempt from the obligation to include an explanatory memorandum, but are also not subject to public consultation, since Act CXXXI of 2010 on public participation in the preparation of legislation does not apply to laws adopted under special legal orders. This exemption may be justified to some extent, as it would indeed be unrealistic to expect the legislator to submit EGDs for public consultation in cases requiring immediate action. However, as discussed above, there are numerous EGDs where both their connection to the state of danger and the urgency of their adoption are highly questionable.

4 Conclusions

As anticipated in the Introduction, Hungary’s emergency legislation deserves closer scrutiny from two perspectives: first, the continuous maintenance of the state of danger, and second, the abusive application of emergency government decrees represent circumstances that raise serious rule of law concerns. In the following, I summarise my findings regarding these two aspects, also addressing why the Hungarian situation is not aligned with international standards.

The requirement that states of emergency be temporary in nature is echoed throughout the legal literature and various international legal instruments. In his seminal book, Giorgio Agamben examined how, in times of emergency or crisis, the suspension of laws can become a lasting condition and how governments expand their power within such states. The author also quoted the German philosopher Walter Benjamin, who in 1940 observed: “[...] der

68 Government decree No. 4/2023 (I. 12).

69 Government decree No. 247/2022 (VII. 11).

Ausnahmezustand, in dem wir leben, ist die Regel” – i.e. “the state of exception in which we live is the rule”.⁷⁰ Oren Gross, in his analysis of modern emergency regimes through the lens of the Roman dictatorship, highlighted that the latter possessed several salient features that are often regarded as setting the basic guidelines for modern-day constitutional emergency regimes.⁷¹ These features include the *temporary character* of the dictatorship and its ultimate goal of preserving, rather than replacing, the constitutional order. Ferejohn and Pasquino similarly emphasize that – at least in the so-called legislative model (a model of emergency powers that emerged in advanced democracies in the second half of the 20th century) – legislative emergency powers are meant to be temporary. In their view, this model presupposes that “emergency powers are to be understood as exceptional to the ordinary operation of the legal system and that, once the emergency subsides, there will be a return to ordinary legal and political processes”.⁷² Gross and Ní Aoláin pointed out that “The principle of temporal duration, so intrinsically linked to the fundamental understanding of the concept of emergency and to the notion of constitutional dictatorship, requires that states of emergency be short lived”.⁷³ Somewhat paradoxically, István Simicskó, leader of the parliamentary group of the Christian Democratic People’s Party – a satellite party of the governing Fidesz party in Hungary, and former Minister of Defence in the third Orbán government (2015–2018) – expressed a similar view in a study published after the COVID-19 state of danger was declared in 2020:

Finding the balance between efficiency and the risk of abuse is very important. So special legal order is always temporary and ultimate, which can be applied as an ultima ratio of the legislation in the times of need, but only if their every constitutional condition is met.⁷⁴

According to the Paris Minimum Standards of Human Rights Norms in a State of Emergency, “The declaration of a state of emergency shall never exceed the

⁷⁰ Giorgio Agamben, *State of Exception* (The University of Chicago Press, Chicago, 2005, translated from *Stato di eccezione*, Bollati Boringhieri, Torino, 2003), 6.

⁷¹ Oren Gross, “Constitutions and emergency regimes”, in Tom Ginsburg and Rosalind Dixon (eds.), *Comparative Constitutional Law* (Edward Elgar, Cheltenham, 2011), 335.

⁷² John Ferejohn and Pasquale Pasquino, “The Law of the Exception: A Typology of Emergency Powers”, 2(2) *International Journal of Constitutional Law* (2004), 210–239, at 217.

⁷³ Gross and Ní Aoláin, *op. cit.* note 12, 57.

⁷⁴ István Simicskó, “Regulation of special legal order in Hungary – Constitutional options in the shadow of the COVID crisis”, 8(2) *Central European Papers* (2020), 65–80, at 65.

period strictly required to restore normal conditions”.⁷⁵ The Venice Commission, referencing this standard, also emphasised that “The most important characteristic of any emergency regime is its temporary character”.⁷⁶ A similar position is expressed in the Document of the Moscow Meeting of the Conference on Security and Cooperation in Europe: “The state of public emergency will be lifted as soon as possible and will not remain in force longer than strictly required by the exigencies of the situation”.⁷⁷ The Venice Commission also made a particularly relevant observation when assessing the implementation of the state of emergency in Turkey in 2016:

Experience in certain other countries shows that the longer the emergency regime lasts, the further the State is likely to move away from the objective criteria that may have validated the use of emergency powers in the first place. The longer the situation persists, the lesser justification there is for treating a situation as exceptional in nature with the consequence that it cannot be addressed by application of normal legal tools.⁷⁸

Regarding the need for regular review of the state of emergency, the OSCE/ODIHR’s report analysing states’ responses to COVID-19 also offers a key recommendation:

States should ensure a regular review mechanism to assess the necessity of the persistence of a state of emergency and the necessity and proportionality of the derogation in light of evolving circumstances.⁷⁹

To what extent do the states of danger in Hungary, in effect since March 2020, align with these theoretical and legal requirements? As Gross and Ní Aoláin pointed out, the principle of temporal duration is reflected in setting temporal limitations on a declared state of emergency, and/or setting strict procedures

75 Richard B. Lillich, “The Paris Minimum Standards of Human Rights Norms in a State of Emergency”, 79(4) *The American Journal of International Law* (1985), 1072–1081, at 1073.

76 Venice Commission, CDL-AD(2016)037, para. 78.

77 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (Conference on Security and Cooperation in Europe, Vienna, 1991), para. (28.3), available at <https://www.osce.org/files/f/documents/2/3/14310.pdf>.

78 Venice Commission, CDL-AD(2016)037, para. 41.

79 OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic (OSCE/ODIHR, Warsaw, 2020), available at https://www.osce.org/files/f/documents/e/c/457567_0.pdf.

concerning the extension of a declared state of emergency.⁸⁰ In the Hungarian constitutional framework, a state of danger, as discussed in Section 2, may initially be declared for 30 days. Although an extension of the state of danger requires the authorization of Parliament, in practice the Government invariably obtains this authorization. Consequently, as noted above, since 2022 the Government has routinely prolonged the state of danger related to the war in successive 180-day intervals. Neither the parliamentary acts authorizing the extensions nor the government decrees implementing them provide a clear justification for *why a return to the normal legal order remains impossible*. The explanatory memoranda attached to the authorization acts are formulaic, virtually identical in structure, and devoid of substantive reasoning.

It should be noted that, procedurally, the Government's actions formally comply with the constitutional and legal framework: it retains discretion over the duration of the state of danger and, prior to each extension, duly requests and obtains authorization from Parliament – in other words, the “regular review mechanism” cited above is formally in place. However, I argue that this practice raises serious constitutional concerns and is hardly compatible with the underlying rationale of emergency regimes. The Government has not provided an explanation as to why the three years since the outbreak of the war have not sufficed to address its consequences within the ordinary legal framework, while other countries more directly affected by the war (such as Poland or the Baltic States) have not declared a state of emergency. As Ferejohn and Pasquino note, advanced democracies often prefer to address emergencies through ordinary legislation.⁸¹ Without downplaying the impact of the war – particularly given Hungary's shared border with Ukraine – it remains difficult to understand, from many perspectives, why the Government insists on maintaining the state of danger.

Thus, rule of law concerns in Hungary manifest themselves in two ways: first, in the effective permanence of the state of danger, and second, in the complete erosion of the “regular review mechanism” as Parliament continues to grant its authorization for repeated 180-day extensions automatically and without substantive justification. The Venice Commission's above-quoted warning in relation to the 2016 Turkish emergency applies with full force to the Hungarian case: “The longer the situation persists, the lesser justification there is for treating a situation as exceptional in nature with the consequence that it cannot be addressed by application of normal legal tools”.⁸²

80 Gross and Ní Aoláin, *op. cit.* note 12, 57.

81 Ferejohn and Pasquino, *op. cit.* note 71, 215.

82 Venice Commission, CDL-AD(2016)037, para. 41.

There are also considerable concerns surrounding the use of EGDs. This article has demonstrated that the Government has issued such decrees in large numbers. Between 11 March 2020, and 30 December 2024 (excluding the period from 18 June to 2 November 2020), a total of 3,160 government decrees were enacted in Hungary, of which more than one-third – 1,081 in total – were EGDs. Although in the second half of 2024 only one in six government decrees fell into this category, the proportion remains significant.

Even more troubling than the sheer number of EGDs is the nature of their subject matter. As the Venice Commission has emphasized, “any emergency measure should have a sufficiently close nexus to the situation which gave rise to the declaration of a state of emergency”.⁸³ As demonstrated above, in a substantial number of cases, not only is a demonstrable “close nexus” lacking, but even an indirect connection between the content of the decree and the state of danger is absent. From this perspective, problematic EGDs can be grouped into two categories. The first, as noted by several scholars, civil society organizations, and by this author, includes dozens of decrees that appear to have no discernible connection to crisis management. However, Section 3.4 of this article examined a different phenomenon – namely, decrees that undoubtedly responded to a crisis, but *not the pandemic*; instead, they addressed the consequences of the Russia–Ukraine war.

A more permissive interpretation suggests that all EGDs are, by definition, related to the emergency, albeit in ways that may not be immediately evident. The broad language of Section 80(1)–(2) of the CDSAA, cited above, grants the Government such wide discretion that virtually any regulatory measure can be framed as crisis mitigation. In particular, this argument could be invoked in relation to economic, financial, and tax measures, or any initiative aimed at maintaining fiscal stability, on the grounds that the decree was adopted “to ensure the stability of the national economy”. As discussed earlier, Section 80(2) *a)–f)* already confers extensive powers on the Government. However, point *g)* – referring to “regulatory matters directly related to the prevention, management, and elimination of the event triggering the state of danger, as well as the prevention and mitigation of its harmful effects” – effectively renders the scope of emergency legislation boundless.

That said, it is important to note that the provision explicitly includes the word “*directly*”, which implies that sweeping interpretations such as “everything is connected to everything” are legally untenable. In my view, the core

83 *Ibid* para. 64.

problem does not lie in the flexible regulatory framework of the CDSAA. As noted in the expert commentary on the law:

Following the entry into force of the CDSAA, there is no longer a risk that the catalogue of measures will become arbitrary – however, at the same time, *ensuring the enforcement of constitutional safeguards will become somewhat more challenging* [emphasis added], as each measure must be individually assessed in terms of proportionality and necessity.⁸⁴

This raises a crucial question: who is responsible for assessing the proportionality and necessity of these measures? If the Government were to exercise self-restraint and respect the framework of the CDSAA, the law's underlying concept – granting general authorization instead of setting out an exhaustive list of measures – could indeed be workable. However, as this study – in line with other analyses – has shown, the Government frequently exceeds even the broad limits set by the CDSAA in its emergency lawmaking. This prompts a further question: what does the Government stand to gain by adopting measures through EGDs? The most evident advantage is that – within the expansive boundaries set by the Fundamental Law and the CDSAA – the Government can introduce virtually any regulation, even in areas normally governed by statute, thereby bypassing Parliament. Secondly, EGDs allow for an expedited legislative process, since they are exempt from public consultation and impact assessment requirements. Thirdly, the Government is not obliged to provide explanatory memoranda – as shown, it has done so for only 0.93% of EGDs. Yet, as argued earlier, substantive justifications would promote transparency and could enhance the legitimacy of emergency legislation, thereby mitigating concerns of abuse.

Finally, it should also be noted that the crises of recent years have given rise to constitutional issues not only in Hungary;⁸⁵ however, the prolonged state

84 Kádár, *op. cit.* note 39, 321.

85 Examining the abuse of power and self-entrenchment during the management of COVID-19, Kouroutakis concluded that “times of exigency create a fertile ground for incumbents to take advantage of power for self-serving purposes, while the system of checks and balances is left with less means to face such practices” [Antonios Kouroutakis, “Abuse of Power and Self-entrenchment as a State Response to the COVID-19 Outbreak: The Role of Parliaments, Courts and the People”, in Matthias C. Kettemann and Konrad Lachmayer (eds.), *Pandemocracy in Europe: Power, Parliaments and People in Times of COVID-19* (Hart Publishing, Oxford, 2022)]. In France, for example, the handling of COVID-19 was, according to some opinions, accompanied by a distortion of the rule of law in the name of

of danger in Hungary, in effect since March 2020, has generated particularly grave constitutional and rule of law concerns. While it would be an overstatement to say that Hungary is governed entirely by decree – given that Parliament remains in session and continues to legislate – the Government has repeatedly relied on EGDs to advance its policy objectives swiftly, sometimes within days, circumventing the ordinary legislative process. Although EGDs can serve as important tools for crisis management, emergency legislation in Hungary has become increasingly unrestrained. This is apparent in both the effectively permanent nature of the state of danger and the use of EGDs as general-purpose instruments to regulate issues with no clear connection to the crisis in question.

the state of emergency [Sylvia Brunet, “The Hyper-Executive State of Emergency in France”, in Matthias C. Kettmann and Konrad Lachmayer (eds.), *Pandemocracy in Europe: Power, Parliaments and People in Times of COVID-19* (Hart Publishing, Oxford, 2022)]. In Poland, the management of the pandemics made it clear that the creation of alternative emergency regimes undermined the rule of law and basic democratic standards [Monika Florczak-Wątor, “Constitutional Challenges in Emergency Governance: An Analysis of Poland’s Reluctance and Regulatory Ambiguities in States of Emergency”, 16(2) *European Journal of Risk Regulation* (2025), 433–445]. The list could be extended much further; however, Hungary is the only country that has continuously maintained a state of exception since COVID-19.