



5 May 2022

On 3 May 2022, Hungary's Minister of Justice submitted a Bill to the Parliament that would once again transform the constitutional system of special legal orders, and would authorise the Government to declare a "state of danger" in the case of an "armed conflict, war or humanitarian disaster in a neighbouring country". This is accompanied by another Bill that would allow the Government to keep its excessive regulatory powers acquired first with a view to the pandemic, and would provide it with yet another *carte blanche* mandate to override Acts of Parliament via emergency decrees.

#### The 10<sup>th</sup> Amendment of Hungary's Fundamental Law

[Bill T/25](#) would amend Article 53(1) of the Fundamental Law in a way that a so-called state of danger (*veszélyhelyzet*) could be declared not only in the case of "a natural disaster or an industrial accident endangering life and property", but also **in the case of "an armed conflict, war or humanitarian disaster in a neighbouring country"**. This formulation would clearly allow the Government to declare a state of danger with a view to the ongoing war in Ukraine.

According to the Fundamental Law as currently in force,<sup>1</sup> the state of danger shall be declared and terminated by the Government, which is not bound by any other actor when making this decision. In a state of danger, the Government may "adopt decrees by means of which it may, as provided for by a cardinal Act of Parliament [see below], **suspend the application of certain Acts of Parliament, derogate from the provisions of Acts of Parliament and take other extraordinary measures**".

These special, emergency government decrees adopted during a state of danger **can remain in effect after an initial period of 15 days only with the Parliament's support** given in full knowledge of the contents of the decrees. Thus, the Parliament has to authorize the Government to extend the force of the specific decrees.

Since the beginning of the COVID-19 pandemic, the Hungarian Government has ordered a state of danger with a reference to the pandemic three times; the latest one (ordered in February 2021) is still in effect.

#### Granting the Government a *carte blanche* mandate to rule by decree

[Bill T/26](#) would amend the Disaster Management Act (Act CXXVIII of 2011), the cardinal act that the Fundamental Law refers to as the one providing the framework for emergency decrees. According to Bill T/26, Article 51/A of the Disaster Management would be supplemented by the following:

"(3) During a state of danger declared in order to eliminate the consequences in Hungary of an armed conflict, war or humanitarian disaster in a neighbouring country, the Government may – in addition to the extraordinary measures and regulations set forth in Subchapters 21–24 [of the Disaster Management Act, applicable under any kind of state of danger] – **suspend the application of certain Acts of Parliament, derogate from the provisions of Acts and take other extraordinary**

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<sup>1</sup> Note that the 9<sup>th</sup> Amendment to the Fundamental Law, adopted in December 2020, altered the entire constitutional framework of special legal orders as of 1 July 2023.

**measures by means of a decree, in order to guarantee the safety of life and health, personal safety, the safety of assets and legal certainty, as well as the stability of the national economy.”**

Thus, instead of adding specific areas to the list in the Disaster Management Act regarding which the Government may adopt emergency decrees, Bill T/26 would make the list open-ended when it comes to a state of danger declared due to an armed conflict, war or humanitarian disaster in a neighbouring country, which means that the Government would be entitled to override any Act of Parliament in basically any area. Thus, it would **excessively widen the scope of the emergency decrees the Government can issue** during a state of danger declared due to an armed conflict, war or humanitarian disaster in a neighbouring country.

The new provision is almost a verbatim copy of an earlier amendment, adopted in June 2020, which granted a similar *carte blanche* mandate to the Government for instances of a state of danger declared with a view to a human epidemic causing mass disease outbreaks. This is a worrying similarity also because the Government has repeatedly used its authorization under the current state of danger to adopt decrees that had no relationship whatsoever with the containment of COVID-19, but in turn had a negative effect on human rights or the rule of law: emergency decrees were used e.g. to interfere with a strike of teachers for better pay, prevent local referendums, or restrict access to public interest data.

#### Potential to suspend and restrict fundamental rights

Similar to the provisions pertaining to a state of danger declared due to a human epidemic causing mass disease outbreaks, Bill T/26 would include the following in Article 51/A of the Disaster Management Act:

“(4) The Government shall exercise its powers conferred under paragraph (3) to the extent necessary and proportionate to the objective pursued, so as to prevent, control and eliminate the consequences in Hungary of an armed conflict, war or humanitarian disaster in a neighbouring country.”

However, this provision is overshadowed by the fact that according to Article 54(1) of the Fundamental Law, under a special legal order and so in a state of danger **the exercise of fundamental rights, save certain rights,<sup>2</sup> may be suspended or may be restricted beyond the extent permissible in ordinary circumstances** under the general rules of the Fundamental Law on restricting fundamental rights.

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The submission of the Bills proposed by the Minister of Justice were, once again, **not preceded by any public consultation**, even though that would have been mandatory under Hungarian law for Bills prepared by Ministries. As far as the context and necessity of the Bills are concerned, it has to be noted that most of the legal changes adopted since the outbreak of the war in Ukraine, including the key elements such as the triggering of the temporary protection scheme, the nature and details on the provision of services to those having obtained temporary protection status, could have been introduced under the normal legal order. Finally, the Bills seem to follow to a worrying extent the pattern of how the Hungarian Government and governing parties used the COVID-19 pandemic to grant excessive regulatory powers to the Government, while simultaneously significantly weakening related constitutional safeguards. (For further information on the latter, see: [Overview of Hungary’s emergency regimes introduced due to the COVID-19 pandemic](#), 1 January 2022.)

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<sup>2</sup> These fundamental rights include the right to life and human dignity; the prohibition of torture, inhuman or degrading treatment or punishment; the prohibition of human trafficking; and the major fair trial guarantees.