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The Fight Against COVID-19: From a Legal Perspective

I. Introduction

The World we once knew so well has drastically changed due to the COVID-19 pandemic, as its effects have reached all sectors of our life, and the legal system is no exception. Governments had to adapt quickly to the challenges in order to save as many human lives as possible. In Hungary, this adaption also meant invoking a state of special legal order, as laid down in the Fundamental Law of Hungary. These emergency processes have the aim of centralizing state power, thus speeding up the state's reaction and strengthening its self-defense capabilities, as it seems that one of the key success factors fighting against a pandemic is the timing of the countermeasures. In this article, I will attempt to highlight through examples the inherent trade-off in terms of quality between the ordinary and special legislative process, which was called to life by COVID-19. On a broader scale, I investigate whether there were any controversies from a legal perspective in connection with the management of the pandemic. Can it be stated that the principle of legality endures an inevitable loss in significance in times of extraordinary crises? The main intent of the article is to encourage the conclusion of lesson's learned by the Hungarian Government during the state of special legal order (from March 11, 2020 until the state of danger was abolished on June 17, 2020) in order to prepare for similar situations in the future.

Among the states of the European Union, a divergence from the ordinary lawmaking processes could be noticed to contain the pandemic. In times of emergency, ordinary legislative processes seem to be too slow-moving, due to the plethora of stakeholders, the division of competencies, the strictly defined legal order of legislation, and extensive preparation requirements, thus with the divergence to special legislative processes the state is empowered to handle emergency situations more effectively. This might be one of the reasons behind the fact that the Hungarian Fundamental Law explicitly lays down a set of rules to be observed in a state of emergency, which means that the framework for exercising extraordinary power is predefined by legal norms. Studies indicate that countries with constitutional provisions for the introduction of a special legal order are significantly less likely to declare a state of emergency.¹ However, in case there are legal norms

¹Christian Bjørnskov - Stefan Voigt: This Time is Different? - On the Use of Emergency Measures During the Corona Pandemic. ILE Working Paper Series No. 36. <https://www.econstor.eu/bitstream/10419/221822/1/ile-wp-2020-36.pdf> (2020.08.04.)

explicitly governing the introduction and scope of a special legal order, it serves as a benchmark, to which the legality of the measures taken can be compared to. It must be noted that there are states in the European Union where the regulation of a state of emergency is not done at a constitutional level, such as for example in Germany.²

In this essay, I will attempt to highlight the changes the fight against the COVID-19 pandemic brought to the legislative processes in Hungary, paying special attention to the potential loss in the standards of legislative quality. For this reason, I will firstly demonstrate the notion of quality in terms of legislation, after I will present the ordinary process of law-making in Hungary. Afterwards, the alterations to the Hungarian legal order due to the pandemic will be presented, particularly in connection with the principle of legality. Lastly, I will highlight a few cases, which could bring to light whether the quality of legislation was affected during the implementation of these measures.

II. Quality of legislation

Firstly, it has to be stated that assessing the quality of legislation requires a complex, comprehensive and multidisciplinary approach. A distinction has to be introduced when elaborating on the topic of the quality of legislation, as legislation does not only have to meet certain criteria in the law-making procedure (procedural principles), but also substantive benchmarks have to be taken into consideration in order to deem legislation to have quality.³

Legislative quality implies that laws comply with constitutional values and procedures.⁴ In case we accept the presumption that the existence of a state has the purpose to serve the good of its people,⁵ it should also be clear that this motive has to accompany all of the state's actions. My personal view of law is that law should serve the needs of the citizens, and not the other way around, that is, people should never be the servants of law. This is the reason I strongly believe that the principles and rights stipulated on the constitutional level were expressed to empower the people to fulfill their potential. For this reason, it should not be a question, why the individual results of legislation shall also meet substantive requirements, as each piece of legislation shall contribute to the realization of the abstract norms stipulated on the constitutional level. In other words, the spirit of the constitutional rights and values should imbibe every other product of legislation, which are all derived from the constitution. This is true more than ever in a period of time, when we can observe an expansion of regulation to newer and newer fields and aspects of

² Emergency measures and the rule of law in the age of covid-19. Democracy Reporting International. https://democracy-reporting.org/dri_publications/emergency-measures-and-the-rule-of-law-in-the-age-of-covid-19/ (2020.03.31.)

³ Ulrich *Karpen*: Comparative Law: Perspectives of legislation. *Legisprudence* 2012/6. sz. 177. o.

⁴ Uo.

⁵ Article XXVI of the Fundamental Law of Hungary

our life, meaning that constitutional values and rights (e.g. rule of law, division of powers, legal certainty etc.) can only come to life at a lower level of the legal hierarchy.

Looking at the other side of the medal, it also seems evident that legislation has to meet certain procedural requirements. My stance on the matter sees the regulation of the procedure of legislation as bringing order into the equation, because this ensures that the process is clear, calculable, the roles and competences are agreed upon in advance. No matter what we do in life, doing it in a calm, well thought out and logical order always seems to lead to better results. Of course, one could argue that art cannot be done by a predetermined set of rules (legislation can be seen as a type of art), however the advances in the field of artificial intelligence seem to suggest otherwise.⁶ Legal order in the field of legislation is also a guarantee against chaos, ad hoc decisions and abstraction of competences.

The complex analysis of the quality of legislation requires measuring to what extent the products of legislation could meet their purposes. For laws to be effective and efficient they have to be well thought-out, thus extensive planning is also required.⁷ Naturally, the planning process has to be firmly based on an evidence-based approach in order to create laws, which have the potential to be effectively implemented in order to reach the intended targets. This notion does not seem to differ greatly from concepts of management and economics in general. There are numerous models on decision making in management theory, where this plan-act-check-adapt sequence can be found. In the third part of this essay I will try to showcase to what extent the Hungarian legal environment gives room to the realization of these benchmarks mentioned above.

In my opinion, political commitment is a prerequisite to realizing quality in legislation. Looking at how organizations in the business world manage to reach high quality of services/products (irrespective of the type of service/product) it can be stated that the commitment of management is required, but each and every member of the given company has to understand their role in reaching the target of high quality. Without the right incentives (relevant key performance indicators) defined by the leaders, the probability of reaching high quality is significantly lower, however management needs the employees in the hierarchy to implement quality in all of the processes. In my view, a state functions similarly in this aspect, as even the most talented codifier cannot function without sufficient political engagement and processes.

Lastly, I would like to highlight that the question whether one given state's legislation (particularly from a substantive point of view) meets the expectations or benchmarks set by another

⁶ Ian Randall: AI gets painting down to a fine art as algorithm learns to mimic the unique styles and brushstrokes of master artists including Van Gogh, Vermeer and Turner. Mail Online. <https://www.dailymail.co.uk/sciencetech/article-6963651/AI-learns-mimic-unique-styles-master-artists-including-Van-Gogh-Vermeer-Turner.html> (2019.04.19.)

⁷ Karpen: I.m. 178.-179. o.

country or supranational organization is very complex, and one that may be of political nature. This phenomenon could be recognized during the negotiations on the *protection of the Union's budget in case of generalized deficiencies with regards to the rule of law in the Member States*.⁸ The leading political party in Hungary had to put up with extensive criticism coming from Europe for various reasons, mostly in connection with infringing commonly recognized European values.⁹

III. The ordinary law-making procedure in Hungary

As nowadays law seems to regulate almost all aspects of life, it is important to have a clear, well-regulated legislative framework. In Hungary, one can distinct between three periods with regards to the regulation of legislation. The first period can be dated until 1949, which can be mostly defined by the lack of regulation regarding legislation.¹⁰ Regulation of the legislation process *en masse* began after 1949 and is characterized by two acts: the act XI of 1987 on law-making,¹¹ and the act CXXX of 2010 on law-making,¹² the latter being currently in force.

III.1. The Fundamental Law of Hungary

In this section, I will present the key regulations of the Fundamental Law of Hungary, which entered into force on the 1st of January 2012, with regards to the legislative process.¹³ The Fundamental Law describes the foundation of the Hungarian legal order, the values, which have to be enforced in the process of legislation, it also stipulates the institutions responsible for legislation, and their competences as well.

⁸ Eider Gardiazabal Rubial - Petri Sarvamaa: Proposal for a regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States. European Parliament.

<https://www.europarl.europa.eu/legislative-train/theme-new-boost-for-jobs-growth-and-investment/file-mff-protection-of-eu-budget-in-case-of-rule-of-law-deficiencies> (2020.07.23.)

⁹ Philippe Damr. Hungary's government remains a threat to European values. Euronews.

<https://www.euronews.com/2019/06/12/don-t-be-fooled-hungary-s-government-remains-a-threat-to-european-values-view> (2020.06.13.) Nicole Rijfkin: What should the EU do about Hungary? Politico.

<https://www.politico.eu/article/what-should-the-eu-do-about-hungary-coronavirus-viktor-orban/> (2020.04.15.)

Estefanía Narrillos: Rule of law in Poland and Hungary has worsened. European Parliament.

<https://www.europarl.europa.eu/news/en/press-room/20200109IPR69907/rule-of-law-in-poland-and-hungary-has-worsened> (2020.01.16.) Matteo Bonelli: Safeguarding values in the European Union: the European Parliament, article 7 and Hungary. Luiss Guido Carli School of Government.

[https://sog.luiss.it/sites/sog.luiss.it/files/SOG%20Working%20Papers%20WP28-2015%20Bonelli%20-%20MB%20\(3\).pdf](https://sog.luiss.it/sites/sog.luiss.it/files/SOG%20Working%20Papers%20WP28-2015%20Bonelli%20-%20MB%20(3).pdf) (2020.06.13.)

¹⁰ Koi Gyula: Jogalkotásunk szabályozásának fordulópontjai a kezdetektől a 2010. évi CXXX. törvényig. [The Hungarian legislation's turning-points from the beginning until the act CXXX of 2010] <https://dfk-online.sze.hu/images/J%c3%81P/2011/3/koi.pdf> (2020.04.07.)

¹¹ A jogalkotásról szóló 1987. évi XI. törvény [Act XI of 1987 on legislation]

¹² A jogalkotásról szóló 2010. évi CXXX. törvény. [Act CXXX of 2010 on legislation]

¹³ The Fundamental Law of Hungary

The Fundamental Law explicitly states values, guiding principles such as democracy,¹⁴ the rule of law¹⁵ and the division of power.¹⁶ The constitution does not only stipulate the legal hierarchy¹⁷ and the provisions about the types of legal regulations, but it also lays down the legal order for the adoption of a new Fundamental Law and for the amendment of the current one as well.¹⁸ The legislative competences are allocated to different constitutional institutions based on the type of legal regulations they have the right to stipulate.¹⁹ The Fundamental Law of Hungary provides the opportunity for the participation of citizens in matters of general concernment.²⁰

The Fundamental Law also regulates the most important organs in the chapter entitled *The State*. The provisions regulating the National Assembly stipulate this organ's responsibilities in the adaptation and amendment of the Fundamental Law, acts and its competences regarding international treaties.²¹ An important guarantee regarding the National Assembly is that its sittings are public,²² which greatly promotes transparency. All in all, it can be stated that the Fundamental Law regulates in sufficient depth the competences for the initiation of acts²³ and also the National Assembly's procedural order, as well the constitutional checks in the process of its legislative functions.²⁴

The Government's,²⁵ the autonomous regulatory organs'²⁶ and the local governments'²⁷ legislative functions are regulated in the Fundamental Law of Hungary.

The Constitutional Court formally exercises constitutional control over the Hungarian legal system, and has several competences, which provide constitutional guarantees in legislation.²⁸ I would like to highlight one phenomenon of the Hungarian legal order with regards to the Constitutional Court, as it has the right to only review the making and promulgation of the Fundamental Law in connection with procedural requirements.²⁹

I believe that based on the regulations of the Fundamental Law of Hungary it can be stated that the legislative competences and procedures, the legal hierarchy and frameworks in general are well defined, because the types of legal regulations are explicitly listed, as well as their relation to one

¹⁴ Article B (1) of the Fundamental Law of Hungary

¹⁵ Article B (1) of the Fundamental Law of Hungary

¹⁶ Article C (1) of the Fundamental Law of Hungary

¹⁷ Article R (1) and (2) of the Fundamental Law of Hungary, Article T (3) of the Fundamental Law of Hungary

¹⁸ Article S (1)-(3) of the Fundamental Law of Hungary

¹⁹ Article T (2) of the Fundamental Law of Hungary

²⁰ Article XXV. of the Fundamental Law of Hungary

²¹ Article 1 of the Fundamental Law of Hungary

²² Article 5 of the Fundamental Law of Hungary

²³ Article 6 of the Fundamental Law of Hungary

²⁴ Article 5 of the Fundamental Law of Hungary

²⁵ Article 15 (3) of the Fundamental Law of Hungary

²⁶ Article 23 (4) of the Fundamental Law of Hungary

²⁷ Article 32 of the Fundamental Law of Hungary

²⁸ Article 24 of the Fundamental Law of Hungary

²⁹ Article 24 (5) of the Fundamental Law of Hungary

another, and also the different types of legal regulations are allocated to one institution of the state, which is responsible for the legislation of the given regulation. Furthermore, it is of great importance that guarantees are provided for making sure that the most crucial organs of the state operate in a way, in which they can promote the realization of substantive values expressed in the Fundamental Law of Hungary. For example, it is stated in the Fundamental Law that public power is derived from the people³⁰ and that they exercise this power through elected representatives,³¹ who are ultimately elected in elections, which express the will of the people,³² and to truly represent the will of the people decisions in the National Assembly are taken by the majority.³³ In this way, the fact that the votes needed to take a decision in the National Assembly is stipulated in the Fundamental Law it promotes the realization of different constitutional values.

III.2. Act CXXX of 2010 on law-making³⁴

The Fundamental Law of Hungary, as the foundation of the Hungarian legal order— or that products of law-making fit into the unity of the legal system.³⁵ The act on law-making regulates in depth the criteria, which each product of legislation has to meet.³⁶ Particular attention is paid to the preparation of laws, ensuring that no unnecessarily excessive regulation is adopted³⁷ and that the professional content is guaranteed.³⁸ The stipulation of the preliminary impact assessment³⁹ procedure is also a guarantee for well thought out legislation, which is crucial to being able to choose the best fitted instrument to reach the intended target.

I would like to highlight an aspect raised in *Karpen's* essay about cooperation, bringing legislation closer to the citizens and that law-making (as an aspect of good governance) should serve the common good.⁴⁰ I believe that in this aspect it is important to focus on the involvement of citizens in legislation, that is to give room to social participation in the context of drafting of laws. Often views are expressed about the Hungarian government's lack of will to promote real social

³⁰ Article B (3) of the Fundamental Law of Hungary

³¹ Article B (4) of the Fundamental Law of Hungary

³² Article 2 (1) of the Fundamental Law of Hungary

³³ Article 5 (6) of the Fundamental Law of Hungary

³⁴ The Hungarian National Assembly and the Office of the Hungarian National Assembly: The legislative process. <https://www.parlament.hu/web/house-of-the-national-assembly/the-legislative-process> (2020.04.16.)

³⁵ 2. § (4) b) of Act CXXX of 2010 on law-making and *Karpen: Uo.*

³⁶ Chapter II of Act CXXX of 2010 on law-making

³⁷ 15/A §. of Act CXXX of 2010 on law-making

³⁸ 16 §. (2) of Act CXXX of 2010 on law-making

³⁹ 17 §. of Act CXXX of 2010 on law-making

⁴⁰ *Karpen: I.m. 155. o.*

participation,⁴¹ however the obligation for consultation is formally stipulated in the act on law-making.⁴²

Act CXXXI of 2010 on social participation,⁴³ declares that it has to be assured that the opinions are expressed on the widest scale possible, with particular regard to the opinions of the marginalized groups from a social-economic perspective.⁴⁴ Transparency and publicity has to be ensured on the broadest scale possible.⁴⁵ Furthermore, everyone taking part in the social participation must cooperate with each other.⁴⁶ The exclusions under the social participation obligation are also listed in the act,⁴⁷ and based on the act, it is also visible that this process is done primarily in the digital space,⁴⁸ which shows the state's eagerness to make the most of the 21st century's technological achievements. The minister responsible for the preparation of the act gathers the opinions and aggregates them into a summary, which he/she publishes on the webpage of the Ministry affected.⁴⁹ There is a possibility in accordance with the act for a direct participation, which is limited to the strategic partners of the given area deemed to be regulated.⁵⁰

Naturally, the formal existence of such consultation mechanisms between society and policymakers does not mean by itself that they are able to exploit all of the potential opportunities, as there is no legal obligation to take the expressed views and arguments into consideration. It seems to me that legislation is less reliant on social participation in individual matters, as the political rhetoric often highlights that society's opinion and values are canalized into the National Assembly through the elected representatives, thus the direction of legislation in individual cases can be derived from the general authorization founded on the outcomes of the elections.

All in all, the act on law-making details the abstract provisions of the Fundamental Law of Hungary in the area of legislation by setting a plethora of criteria to be met and also processes to be observed. It also has to be mentioned that the complete lifecycle of legislation is covered in the act, from the analysis phase to the promulgation, which highlights a strategic approach to the whole legislative lifecycle. This attitude, in my opinion, promotes the view that legislation should serve the common good of the people.

⁴¹ e.g.: Európai Parlament: A Magyarországnak szóló országspecifikus ajánlások a korrupcióval kapcsolatos ajánlásairól.[Recommendations on corruption in the country-specific recommendations for Hungary] https://www.europarl.europa.eu/doceo/document/E-8-2015-010866_HU.html?redirect (2020.07.28.)

⁴² 19.§ of Act CXXX of 2010 on law-making

⁴³ A jogszabályok előkészítésében való társadalmi részvételtől szóló 2010. évi CXXXI. törvény [Act CXXXI of 2010 on the social participation in legislation]

⁴⁴ 2. § (1) of Act CXXXI of 2010 on social participation in legislation

⁴⁵ 2. § (2) of Act CXXXI of 2010 on social participation in legislation

⁴⁶ 2. § (3) of Act CXXXI of 2010 on social participation in legislation

⁴⁷ 5. § (3) of Act CXXXI of 2010 on social participation in legislation

⁴⁸ 7. § (1) a) of Act CXXXI of 2010 on social participation in legislation

⁴⁹ 11. § of Act CXXXI of 2010 on social participation in legislation

⁵⁰ 13. § of Act CXXXI of 2010 on social participation in legislation

III.3. Act XXXVI of 2012 on the National Assembly⁵¹ and 10/2014. (II. 24.)⁵²

In this section, without going into details, I would like to raise the Readers attention to the existence of another layer of regulation, which governs the process of legislation in Hungary. The act on law-making explicitly states the requirement of professional pieces of legislation, which is significantly guaranteed for by the committees, especially the law-making committee of the National Assembly.⁵³ Furthermore, the National Assembly's decree of 10/2014. (II. 24.) regulates the National Assembly's procedure to the smallest detail. Each aspect, situation, which may arise during the procedure of the National Assembly is covered in the decree.

All in all, the legislative process is legally well defined in Hungary by multiple layers of legal regulations, which complement each other. The main requirements, institutions and rules are defined in the Fundamental Law of Hungary. General requirements are stipulated in more detail in the act on law-making, and other cardinal questions regarding legislation are also sorted in acts, like the act on social participation. Lastly, the National Assembly's legislative process, which could be seen as the most important legislative organ, is regulated in a very detailed manner in the above-mentioned decree. The depth and detail of the regulation of the legislative process provides clarity, order, calculability and legal certainty, which I believe is a vital aspect in a good governed democracy.

IV. The measures taken in response to COVID-19

IV.1. Introduction of the special legal order

On March 11, 2020 the Hungarian Government in the Government Decree 40/2020. (III. 11.)⁵⁴ declared a state of danger based on Article 53 of the Fundamental Law of Hungary, which aligns into the pattern of Governments asking for a broader scope of authority.⁵⁵ There are views stating

⁵¹ Az Országgyűlésről szóló 2012. évi XXXVI. törvény. [Act XXXVI of 2012 on the National Assembly]

⁵² 10/2014. (II.24.) OGY határozat egyes házszabályi rendelkezésekről. [The National Assembly's decree of 10/2014. (II.24.) on the Standing Orders of the National Assembly]

⁵³ 21/A §. of act XXXVI. of 2012 on the National Assembly

⁵⁴ A veszélyhelyzet kihirdetéséről szóló 40/2020. (III.11.) Korm. rendelet. [The Government's decree of 40/2020. (III.11.) on the introduction of the state of danger]

⁵⁵ Stephan *Harris*: State of emergency: how different countries are invoking extra powers to stop the coronavirus. The Conversation. <https://theconversation.com/state-of-emergency-how-different-countries-are-invoking-extra-powers-to-stop-the-coronavirus-134495> (2020.03.30.)

the existence of a correlation between the weakness of a democracy and the frequency of introducing a special legal order,⁵⁶ however in Italy declaring a state of emergency is not rare.⁵⁷

I must emphasize the arguments of *Szente*,⁵⁸ who demonstrated that the introduction of the state of danger via 40/2020. (III.11.) was unconstitutional, due to the fact that the act CXXVIII of 2011 on disaster management and amending certain related acts⁵⁹ expands the Fundamental Law's definition of the state of danger in 44. §. In accordance with the provisions of the Fundamental Law, a state of danger may solely be declared in case of a natural disaster or industrial accident. The mentioned act's 44. § a) and b) point provide examples for natural disasters⁶⁰ and industrial accidents,⁶¹ which are needed to introduce a state of danger. However, the reason, which was cited in 40/2020. (III. 11.) as the reason for the declaration of the state of danger can be found in point 44. § c) of the act of CXXVIII, which lists other sources of dangers. There is no indication among the provisions of the Fundamental Law that there can be other situations, based on which the Government may invoke a state of danger, other than the two explicitly declared, thus the act expanded its authority in regulating an area reserved for the Fundamental Law. I personally agree that 44. § c) of the mentioned act is unconstitutional, thus infringes the principle of legality, and another method should have been used to declare the state of danger. In my view, deterring from the legal norms set forth particularly for such scenarios will cast doubt on the *raison d'être* of special legal orders, the legal order in general, thus undermining trust in law itself.

My first suggestion to comply with the principle of legality is that Article 53 (1) of the Fundamental Law should have been amended. The result of a potential amendment could take the following form: *"In the event of a natural disaster, industrial accident or other emergency laid down in a cardinal Act endangering life and property, or in order to mitigate its consequences, the Government shall declare a state of danger, and may introduce extraordinary measures laid down in a cardinal Act."* Cardinal acts are a special form of acts, which require a qualified majority to be adopted.⁶² In this way, 44. § c) of Act CXXVIII would not expand the Fundamental Law's provision unconstitutionally. The other way to avoid the uncertain legal situation, the state of danger could have been declared based on a

⁵⁶ *Szente* Zoltán: A 2020. március 11-én kihirdetett veszélyhelyzet alkotmányossági problémái. [The constitutional issues regarding the introduction of the state of danger on the 11th of March 2020] MTA Law Working Papers. <https://jog.tk.mta.hu/mtalwp/a-2020-marcius-11-en-kihirdetett-veszelyhelyzet-alkotmanyossagi-problemai?download=pdf> 2020/9. sz. 8. o.

⁵⁷ Théo *Fournier*: The Italian state of emergency: Responses and consequences of fundamental freedoms. European University Institute. <https://euiideas.eui.eu/2020/03/25/the-italian-state-of-emergency-responses-and-consequences-for-fundamental-freedoms/> (2020.03.25.)

⁵⁸ *Szente* Zoltán: I.m. 15-17. o.

⁵⁹ A katasztrófavédelemről és a hozzá kapcsolódó egyes törvények módosításáról szóló 2011. évi CXXVIII. törvény. [Act CXXVIII of 2011 on disaster management and amending certain related acts]

⁶⁰ Act CXXVIII of 2011 44. § a)

⁶¹ Act CXXVIII of 2011 44. § b)

⁶² Article T (4) of the Fundamental Law of Hungary

natural disaster, although *Tamás Lattmann* has published his views stating that a pandemic cannot be considered as a natural disaster.⁶³ In my opinion, his argument in connection with the decree of the local government of Gyomaendrőd is weak, as a pandemic rarely causes damages to property. Even if we accept the views of *Lattman*, it seems that the declaration of the state of danger in reaction to COVID-19 based on a natural disaster would have been less controversial.

The third scenario questions the introduction of a special legal order, as the epidemiological institutions stipulated in the Act CLIV of 1997 on health care could have been put into service in the ordinary legal order as well. Looking at European examples, it must be noted that the Hungarian government's centralization of power fits with the trend. Furthermore, I believe that the state of danger may have contributed to the public's behavior, as it transmits a sense of severity, which could have motivated masses to observe the restrictive measures.

IV.2. The substance of the state of danger

The Prime minister of Hungary was declared responsible for the defense measures.⁶⁴ The second Paragraph of Article 53 of the Fundamental Law of Hungary authorizes the Government *“in a state of danger to adopt decrees by means of which it may, as provided for by a cardinal Act, suspend the application of certain acts, derogate from the provisions of acts and take other extraordinary measures.”* The extraordinary measures were defined beforehand in an itemized list in 47-51. § of Act CXXVIII, which specifies the Government's scope of authority concretely. The measures that the Government may impose in a state of danger was expanded in Section 2 of the Act XII of 2020 on the defense against the corona virus⁶⁵ on the 31st of March. This section declares that *“during the state of danger, the Government may, in addition to the extraordinary measures and regulations set forth in the Disaster Management Act, suspend the application of certain Acts of Parliament, derogate from the provisions of Acts and take other extraordinary measures by means of a decree, in order to guarantee for citizens the safety of life and health, personal safety, the safety of assets and legal certainty, as well as the stability of the national economy.”*⁶⁶ Botond Fülöp argues that the above mentioned section is unconstitutional as Article 53 (2) of the Fundamental Law requires that the scope of extraordinary measures taken shall be provided for by a cardinal Act. Although

⁶³ Tamás Lattmann: *Vajon “elemi csapás” egy járvány, van-e alaptörvényi alapja a veszélyhelyzet kihirdetésének?* [Could a pandemic be a natural disaster, is there a constitutional basis for the introduction of a state of danger?] <https://lattmanntamas.hu/2020/03/11/vajon-elemi-csapas-egy-jarvany-van-e-alaptorvenyi-alapja-a-veszelyhelyzet-kihirdetesenek/> (2020.07.29.)

⁶⁴ 40/2020. (III.11.) 2§.

⁶⁵ A koronavírus elleni védekezésről szóló 2020. évi XII. törvény. [Act XII of 2020 on the defensive measures against the coronavirus]

⁶⁶ Hungarian Helsinki Committee: Background note on Act XII of 2020 on the containment of the coronavirus. 2020.03.31. https://www.helsinki.hu/wp-content/uploads/HHC_background_note_Authorization_Act_31032020.pdf (2020.08.04.)

2. § of the Act XII of 2020 was adopted in the form of a cardinal Act,⁶⁷ it does not meet the requirement of definiteness due to the virtually unlimited scope of authority the Government was given to take extraordinary measures.⁶⁸ This ultimately meant that the Hungarian Government was authorized to rule by decrees and implement actions, which are at least indirectly in connection with the above mentioned objectives, however the National Assembly remained in place, which was falsely reported by CNN for example.⁶⁹

It has to be mentioned that 2 (2) § of the act against the corona virus contains limitations regarding the Government's scope of action, as it may only exercise its power in order to contain the virus and to prevent its negative effects. Questions may arise about the effectivity of this rule, if we look at cases like the Kartonpack,⁷⁰ or the case of the city of Göd and the Samsung factory.⁷¹ On the other hand, it must be mentioned that based on Section 3 (2) of the act, the National Assembly has the right to withdraw the additional power given to the Government, and in accordance with Section 8, the National Assembly has the right to withdraw this act. As visible, a lot of power in terms of legislation was concentrated in the hands of the Government, and the Government had been given the right to pass legal norms in the forms of governmental decrees, which could also overrule laws.

The decrees of the Government remain in force for 15 days, unless they are extended on the basis of authorization given by the National Assembly to the Government.⁷² Lastly, Paragraph 4 of Article 53 of the Fundamental Law of Hungary declares that *“upon the termination of the state of danger, such decrees of the Government shall cease to have effect.”* As the 15-day time limit was coming closer and closer political discussions began about passing an act, which would grant the government the power to extend the measures taken on the basis of Article 53 until the state of danger would be withdrawn. The limitless duration of this provision was of major importance during the political debate between the ruling party and the opposition. The ruling party argued that setting a time limit was not feasible, as one could not be sure that the National Assembly could be operable with the spread of the virus. In the end, the argument of the ruling party came out on top, thus Section 3 of the Act XII of 2020 on the defense against the corona virus did not contain a temporal limitation. Some stated that this solution is unprecedented in the European Union, and believe that it is a clear

⁶⁷ Act XII of 2020 9.§ a)

⁶⁸ Botond *Fülöp*: Nem azért alkotmányellenes a felhatalmazási törvény, amiért mondják. De tényleg az.

⁶⁹ Hungary Today: Szijjártó to CNN. <https://hungarytoday.hu/szijjarto-to-cnn-dissolution-of-hungarian-parliament-fake-news/> (2020.04.10.)

⁷⁰ Halmai, Gábor - Scheppelle, Kim Lane: *Don't Be Fooled by Autocrats: Why Hungary's Emergency Violates Rule of Law.* *VerfBlog.* <https://verfassungsblog.de/dont-be-fooled-by-autocrats/> (2020.04.22.)

⁷¹ Karsai, Dániel: *Let's not fool ourselves either!: Some remarks on Professor Halmai's and Professor Scheppelle's blogpost.* *VerfBlog.* <https://verfassungsblog.de/lets-not-fool-ourselves-either/> (2020.04.27.)

⁷² Article 53 (3) of the Fundamental Law of Hungary

evidence of a “power grab.”⁷³ Ursula von den Leyen, implicitly clarified her stance on the measure taken by the Government of Hungary by declaring that the emergency measures must not last indefinitely.⁷⁴ Vera Jourova, the Vice-President of the European Commission for Values and Transparency announced in a speech the close monitoring of emergency measures in member states. She expressed her concern about the state of rule of law in Poland and in Hungary.⁷⁵ The indefinite scope of the emergency measures was one of the main reasons why the Hungarian ruling party came under excessive pressure from different stakeholders of the European Union, which led to another wave of political warfare between the Hungarian Government and several European leaders. Several Member States of the European Union issued a statement expressing their concern over the threat this measure means to the rule of law, democracy and fundamental rights.⁷⁶ Donald Tusk, the leader of Europe’s center right political grouping declared that he considers this power grab to be morally unacceptable.⁷⁷ Viktor Orbán responded to these allegations by stating that he will be more than ready to discuss these issues when the pandemic is over, however, until then he stated he “has no time for this.”⁷⁸ The situation seemed to escalate a step further by Péter Szijjártó’s letter to several foreign ministers accusing their countries of spreading fake news about Hungary.⁷⁹ Stepping away from the world of politics, it has to be noted that it is commonly accepted⁸⁰ that in a democracy no institution shall exercise limitless and uncontrolled authority, not even in a state of emergency. On the contrary, after dealing with the cause for the introduction of a special legal order, the reintroduction of the ordinary exercise of power has to be done without any delay.⁸¹ Even in ancient Rome dictators had a limited authority.⁸²

⁷³ Emergency measures and the rule of law in the age of covid-19. Democracy Reporting International. https://democracy-reporting.org/dri_publications/emergency-measures-and-the-rule-of-law-in-the-age-of-covid-19/ (2020.03.31.)

⁷⁴ Eric Mamer. Statement by President von den Leyen on emergency measures in Member States. European Commission. https://ec.europa.eu/commission/presscorner/detail/en/statement_20_567 (2020.03.31.)

⁷⁵ Christian Wigand. Remarks by Vice-President Vera Jourova. European Commission. https://ec.europa.eu/commission/presscorner/detail/en/speech_20_861 (2020.05.11.)

⁷⁶ 13 EU members issue statement on rule of law in context of COVID-19 crisis. Budapest Business Journal. https://bbj.hu/coronavirus/13-eu-members-issue-statement-on-rule-of-law-in-context-of-covid-19-crisis_180804 (2020.04.02.)

⁷⁷ Maia De La Baume - Lili Bayer. Tusk warns of state power grabs after Orbán move. Politico. <https://www.politico.eu/article/donald-tusk-to-epps-viktor-orban-supporters-re-consider-expelling-his-fidesz-party/> (2020.04.01.)

⁷⁸ „I have no time for this!” Portfolio. <https://www.portfolio.hu/en/economy/20200403/i-have-no-time-for-this-orban-tells-epp-secretary-general-424044> (2020.04.03.)

⁷⁹ Péter Szijjártó sends letter to Danish, Finnish, Icelandic, Norwegian and Swedish foreign ministers. Website of the Hungarian Government. <https://www.kormany.hu/en/ministry-of-foreign-affairs-and-trade/news/peter-szijjarto-sends-letter-to-danish-finnish-icelandic-norwegian-and-swedish-foreign-ministers> (2020.05.12.)

⁸⁰ László Lakatos: A különleges jogrend és a honvédelem szabályzásai. [The special legal order and the regulation of home-defense] MTA Law Working Papers. 2014/49. sz. 1-3. o.

⁸¹ Szabolcs Till: Különleges jogrend. [Special legal order] In: Internetes Jogtudományi Enciklopédia (szerk. Jakab András – Fekete Balázs) <http://ijoten.hu/szocikk/kulonleges-jogrend> (2019).

⁸² Benedek Ferenc - Pókecz Kovács Attila: Római magánjog. [Roman Private Law] Dialóg Campus, Budapest 2015.

Looking at other emergency measures in the European Union, it can be stated that in France for example the Prime Minister was authorized to take measures in areas like the restriction of movement, lockdowns, etc. by decrees.⁸³ The opposition party expressed its concerns regarding the law's infinite field of action, but the bill was passed.⁸⁴ It seems that the scope of potential action that the French Government had at its disposal is similar to the authorization of the Hungarian Government, however the French act contained a limitation in time: after two months, the state of emergency had to be extended by the Parliament.⁸⁵ It is also visible that in the most hardly hit Italy, emergency measures impacting several civil liberties were adopted through decrees of the President of Council of Ministers, which is legally based on the declaration of the national emergency on the 31st of January 2020.⁸⁶ In comparison to Hungary, it has to be mentioned that in Italy the emergency measures had a limited life-span⁸⁷, which again contradicts to the Hungarian approach. Based on the examination of the emergency measures taken by two of the most COVID-19 affected states, it can be seen that not even France nor Italy found it to be necessary to set an unlimited time limit for their emergency measures. One might wonder why the Hungarian Government, amid being scrutinized by other European countries and seeing that they could manage without limitless emergency measures, decided to uphold their position.

Lastly, I would like to highlight a few legal norms, which were passed in the state of danger. In general, it can be stated that there have been issues with the decrees passed in recent times, due to the fact that the phrasing of the norms were not clear. An example for this were the decrees published in the 96th issue of the Magyar Közlöny, which is the official gazette of Hungary, in which generally binding rules of conduct have to be promulgated. These decrees eased the defense measures in Hungary, with the exception of Budapest and Pest County. Based on these decrees some members of the Government⁸⁸ stated that it was forbidden for inhabitants of Budapest and

⁸³ Antonie F. Kirry, et al.: French law in response to the Covid-19 epidemic. <https://www.debevoise.com/insights/publications/2020/03/french-law-in-response-to-the-covid19-epidemic> (2020.03.25.)

⁸⁴ French parliament declares 'state of health emergency.' Euronews. <https://www.euronews.com/2020/03/21/french-parliament-declares-state-of-sanitary-emergency> (2020.03.22.)

⁸⁵ Antonie F. Kirry, et al.: Uo.

⁸⁶ Tega, Diletta - Massa, Michele: Fighting COVID 19 – Legal Powers and Risks: Italy. Verfblog. <https://verfassungsblog.de/fighting-covid-19-legal-powers-and-risks-italy/> (2020.03.23.)

⁸⁷ Théo Fournier: The Italian state of emergency: Responses and consequences of fundamental freedoms. European University Institute <https://euidas.eui.eu/2020/03/25/the-italian-state-of-emergency-responses-and-consequences-for-fundamental-freedoms/> (2020.03.25.)

⁸⁸ e.g. Alexandra Szentkirályi mentioned in a blog post that it was not possible for citizens of Budapest and Pest County to leave their homes and go to other parts of the country. For more details please visit: <https://www.portfolio.hu/gazdasag/20200502/koronavirus-nem-lephetik-el-a-balatont-a-budapestiek-a-videki-szorakozohelyek-is-zarva-maradnak-429552> or <https://www.portfolio.hu/gazdasag/20200507/micsoda-budapestkent-kimereszkedhetek-pest-megye-hataran-tulra-ezt-most-hogy-430562> The so-called „operatív törzs” also stated that citizens of Budapest and Pest County could not visit other parts of the country. For more details please visit: https://hvg.hu/itthon/20200507_koronavirus_kijaras_korlatozas_budapest_pest_megye_vidék_balaton_nyaralo

Pest County to leave this area, unless they had proper justification to do so. Police was also ordered to enforce this rule, however a few days later other members of the Government declared that the before mentioned citizens could in fact leave Budapest and Pest County, and it was also stated that this misunderstanding was due to the wrong interpretation of the decree.⁸⁹ I believe that this case reflects the failure of cooperation between the different sectors of the Government, which was caused by an unclear decree. For sure, the unambiguous wording of norms could have been avoided with more extensive preparation and impact assessment. Another area of extraordinary governmental action was the reopening of health services, which was initiated by the Minister responsible for the field in the form of legally nonbinding letters.⁹⁰ The procedures attached to the letter caused a misunderstanding, as it was not clear whether a negative PCR test was required for all types of dental treatments, and the financial background of the tests was also not clarified. The Hungarian Medical Association's Dentistry Section also expressed its concerns regarding the PCR tests, stating that it is impossible to have each patient tested prior to dental treatments. Subsequently, the procedures were revised.⁹¹ Furthermore, the Dentistry Section also highlighted that the Government's decrees, and their amendments do not provide clear guidance for the reopening of health services. I believe the mentioned examples showcase the strain and the challenge that the pandemic's management has caused the Government in terms of legislation. I mentioned these two examples to support my argument in showcasing the decrease in the quality of legislation in the state of danger, as these cases caused havoc throughout the Hungarian society. Looking at these examples, it seems that the lack of time to evaluate the outcomes led to the unintended misunderstandings. Assessing the actions taken by the Government during this period, and raising awareness to the controversial, ambivalent decisions also emphasizes the value of a well-functioning government, which cannot be taken for granted. However, concentrating our focus on these issues cannot overshadow the fact that the pandemic did not lead to such horrific scenes in Hungary as it did in Italy and Spain.⁹² Lastly, looking back at these examples might be

⁸⁹ Itt a pontosítás: a fővárosiak is mehetnek a vidéki ingatlanjaikba. [Clarification: Residents of the capital can also visit their rural properties]Portfolio. <https://www.portfolio.hu/gazdasag/20200507/itt-a-pontositas-a-fovarosiak-is-mehetnek-a-videki-ingatlanjaikba-430498> (2020.07.20.)

⁹⁰ The letter of Prof. Dr. Miklós Kásler Minister
<https://www.kamara.fogorvos.hu/?module=news&action=getfile&fid=254650>

⁹¹ Danó Anna - Batka Zoltán - Doros Judit: Észrevétlen nyitás: tesztkáosz van, miközben próbálják a betegeteket lassítani. [Unseen opening: test chaos amid trying to slow the flow of patients] Népszava. <https://nepszava.hu/3076908-eszrevetlen-nyitas-tesztkaosz-van-mikozben-probaljak-a-betegeteket-lassitani> (2020.05.05.) Egészségügyi Szakmai Kollégium Tagozatai és Tanácsai: 13. Fog- és szájbetegségek eljárásrend. [The Hungarian Medical Association's 13th procedure on the treatment of mouth diseases] [https://kollegium.aeck.hu/\(X\(1\)S\(kpgaj2cz0zdmjip1t3uy3u1y3\)\)/Dokumentumok/Index?fbclid=IwAR2jhbgr99zVXpdgPi19bK1h6SzWjLH07UkkEQwSp7whEveCFFtG0pqXnl&AspxAutoDetectCookieSupport=1](https://kollegium.aeck.hu/(X(1)S(kpgaj2cz0zdmjip1t3uy3u1y3))/Dokumentumok/Index?fbclid=IwAR2jhbgr99zVXpdgPi19bK1h6SzWjLH07UkkEQwSp7whEveCFFtG0pqXnl&AspxAutoDetectCookieSupport=1)

⁹² COVID-19 deaths worldwide per one million population as of July 22, 2020, by country. Statista. <https://www.statista.com/statistics/1104709/coronavirus-deaths-worldwide-per-million-inhabitants/> (2020.07.22)

useful in locating the cause of the issues in the Government's work, which provides the opportunity to prepare for the future, should another similar situation occur.

V. Conclusion

All in all, the COVID-19 virus has affected all areas of our lives, and it has forced all of us to adapt to a new way of living. However, it was not just the ordinary citizens that had to adapt, but also the leaders of the states, as they found themselves in an unprecedented emergency. It is clear that controlling and handling such situations requires the centralization of power in order to have the ability to make the needed decisions at the right time. After presenting the ordinary legislative process, I believe it is safe to say that major alterations to the Hungarian legislative procedure were called to life in order to fight the pandemic. I have also highlighted the political controversies that have come to light in connection with the declaration of the state of danger and the act XII of 2020. I have also mentioned two cases, which present the hardships the Government had to face in order to overcome the new challenges.

I strongly believe that this period of history requires cooperation between the citizens, as without a cure against this virus, containing the spread of the infection is only possible through the institutionalized collaboration between members of society. Without a doubt, the Government has the obligation primarily to initiate and manage the efforts of society through clear legal norms. I personally also believe that a key factor in facing up to such emergencies also depends on the trust that the people place in their Government. This sense of trust should be founded on the unquestionable legality of the Government's actions, which may require the clarification of the special legal order's norms and placing emphasis on unambiguous legislation. Surely, the sense of trust will increase in case the lessons learned during the first phase of COVID-19 will be implemented in governmental actions, should there be another emergency in the future.