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CHANGING CHALLENGES AND CRISIS MANAGEMENT METHODS WITHIN A STABLE RULE OF LAW – HUNGARY'S CONSTITUTIONAL RESPONSE TO THE CHALLENGES OF THE 21ST CENTURY

Abstract: *The defence and security of Hungary is a national matter, on which the survival and development of the nation, the community and individual rights are based. It is a priority objective to enhance the security of the country and the nation and to fulfil Hungary's obligations in the international alliance system. In view of this, the continuous functioning of the State organisation, the performance of security and defence tasks and, if necessary, the restriction of citizens' rights within the constitutional framework must be ensured with adequate operational efficiency and in full compliance with the guarantees of the rule of law, even in the context of the peacetime and special legal order periods defined in Fundamental Law, and in the course of coordinated preparation and defence against various threats, harmful, influencing and offensive behaviour based on natural and civilizational events and human actions.*

The security challenges of the 21st century and the rapidly changing environment call for a new regulatory framework that can provide a flexible, transparent way in which defence and security system can operate in peacetime and in times of special legal order. A framework for the preparation of state bodies needs to be provided and measures along which the competent bodies can act in a period of special legal order need to be defined in detail, so that the country's functioning and its legal order can return to normal as soon as possible after the reason of the special legal order has been lifted. It is an important pillar of stability of a democratic state that the freely elected legislature, Parliament, determines the content and the form of cases in which it is possible to derogate from the general rules. There are different types of special status, so the concentration of power should be implemented only to the extent strictly necessary to resolve the

situation, in accordance with the principle of proportionality. The institutions of special legal order are therefore institutions of a temporary and urgent nature which can be deployed as ultima ratio of state instruments in a situation of necessity, provided that their constitutional conditions are met.

Keywords: *special legal order, qualified period*

1. THE CONSTITUTIONAL REGULATION OF QUALIFIED SITUATIONS FROM THE CHANGE OF REGIME TO THE CREATION OF FUNDAMENTAL LAW

The system of public administration and the public authorities as a whole are always expected to be able to adapt to the rapidly changing threat levels and even to the simultaneous occurrence of different types of crisis.

In Hungary, the period immediately before and after the change of regime witnessed the establishment of the rule of law, which was a milestone in the constitutional regulation of the special legal order. The Act XXXI of 1989 on amending the Constitution amended Act XX of 1949 with effect of 23 October 1989, which now became the Constitution of the Republic of Hungary, and, in addition to the destruction of the party-state framework and the establishment of democratic conditions, contained the basic constitutional rules on state of national crisis, state of emergency and state of danger. The National Assembly, exercising its rights of popular sovereignty¹ to ensure the constitutional order of society, was empowered to proclaim the first two:

*“shall declare a state of national crisis and set up a National Defence Council in the event of the declaration of a state of war or an imminent danger of armed attack by a foreign power (danger of war); / shall declare a state of emergency in the event of armed actions aimed at subverting the lawful order or at exclusively acquiring power, and in the event of serious acts of violence massively endangering life and property of citizens, committed with weapons or with instruments capable of causing death, in the event of a natural disaster or industrial accident (together referred to as an „emergency”)”.*²

With regard to emergencies, Government (in the former terminology of the Act: the Council of Ministers) was empowered to take the necessary measures *“to avert an elementary disaster or its consequences that threaten the safety of life and*

¹ About popular sovereignty exercised directly in the Hungarian legal practice, see: Téglási, András: *Azért a nép az úr? A népszavazás aktuális alkotmányjogi kérdései az Alaptörvény elfogadása óta* (Are the people the lord? Current constitutional issues in the referendum since the adoption of the Fundamental Law) MTA LAW WORKING PAPERS vol. 1. no. 19, pp. 1-34.

² Article 19(3)(h) and (i) of Act XX of 1949 on the Constitution of the Republic of Hungary (as of 23.10.1989)

property of citizens (hereinafter: emergency) and to protect public order and public security”³, including the adoption of decrees other than the provisions of certain Acts, with the authorization of the National Assembly. In all three cases, the legislator intended to lay down the detailed rules in a separate constitutional law.

Act CX of 1993 on National Defence declared national defence to be a national matter and, with reference to the relevant sections of the Constitution, also contained the basic rules applicable in a declared state of national crisis and state of emergency, as well as the basic rules applicable to the National Defence Council. It also referred, among other things, the obligation of citizens to provide civil defence and the obligation to provide classified information during a qualified period. In addition, it devoted a specific chapter to the detailed rules applicable during a state of national crisis and state of emergency, regulating the powers of the President of the Republic, the Defence Council and Government, and authorising the restriction of constitutional rights by the use of a wide range of instruments. These included, for example, prior control of press and other mass media publications and making their publication subject to a publication permit, limiting or prohibiting the circulation of vehicles on roads, railways, waterways and airways for a certain period of the day or in a certain area (route), and restricting the public’s access to the streets or other public places (curfew), making the hold of an event or public gathering (public event) in a public place subject to prior authorisation, the evacuation of the population from a specified area of the country for the necessary period, the restriction of the travel of Hungarian citizens abroad or the entry of foreigners, or the imposition of a continuous civil protection service.

The most significant change from the start of the South Slavic war was the introduction of the event of an unexpected attack in 1994 and the amendment of the Constitution in 2004, when the institution of a preventive state of defence was introduced as a new qualified period, which could be declared by Parliament “*in the event of the threat of an external armed attack or in order to fulfil an allied obligation for a specified period of time*”⁴ and authorised Government to take the necessary measures.

The change of regime took place in a bipolar world, just emerging from the Cold War, which was based on the opposition between the West and the East, and thus old prejudices were also dominant in security policy. Later, however, the Hungarian government in power had to face a completely different set of security challenges as the furnace that was to unite the world heated up and globalisation took hold on a massive scale. In 1989, these changes, which today are unfortunately reality, existed only in the form of vague, dystopian predictions. The special

³ Article 35(1)(i) of Act XX of 1949 on the Constitution of the Republic of Hungary (as of 23.10.1989)

⁴ Act CIV of 2004 amending Act XX of 1949 on the Constitution of the Republic of Hungary Act CIV of 2004 § 1 (1)

legal order rules established at that time were primarily motivated by the spirit of preserving the fresh democratic *acquis* rather than by the need to respond flexibly to global social and technological changes that were not yet foreseeable.

Recalling Prof. Dr. István Kukorelli's recollections of the opposition roundtable discussions,⁵ Ádám Farkas also stated that the main goal of regime change was to force the state's apparatus of armed violence into Parliamentary system of division of powers, if necessary at the cost of a reduction in operability.⁶ Later, with the recognition and rise of the threat of hybrid warfare, terrorism or cyber-attacks, the legislator also tried to adapt the regulation to new challenges, in the probable spirit that a specific rule for a given set of cases could be more effective, but at the same time, as we shall see later, the arsenal of possible threats is much broader and more variable than a qualified periodicity of facts based on each set of cases in isolation. With regard to hybrid warfare, the conclusion to be drawn from an examination of the question is that, since there is no declared war, it is not possible to respond to it in the traditional way, by the use of military force, but only by adequate indirect counter-measures.⁷ And this indirect defence includes, among other things, special rules of law enacted in the interests of security.

Taking lessons from the 20th century and following the example of Western democracies, particular emphasis has been placed in the drafting of legislation governing qualified periods on the need to ensure that the restriction of rights – or coercive measures – in a given qualified situation is proportionate to the degree of danger in order to maintain or achieve security. For protection to be effective, it is important that people everywhere have a realistic sense of danger and security. It is criminally irresponsible to keep society's sense of security asleep and at a low level, but it can also disrupt the normal functioning of society if people are unduly warned of the dangers they face in their daily lives by taking measures that go beyond the security risks.⁸ In a state governed by the rule of law, the development of a sense of security in society is greatly facilitated by the stability of the legal system and the clarity of legislation, in addition to the adequate state of military and defence forces. It is important to note that, even in a special legal order, the State's room for manoeuvre is not unlimited or unrestricted.⁹ The State's task is to guar-

⁵ The so-called roundtable discussions were a series of negotiations that took place in several countries of the Eastern Bloc between communists and the opposition. They were a key component in the collapse of the communist regimes and the smooth transition to democracy. Cserny, Ákos – Téglási, András: Certain Elements of the Transformed Hungarian Electoral System in the Light of the Experience of the 2014 Elections. *OSTEUROPA-RECHT* Vol. 61. no. 3., p.342. fn. 50.

⁶ Ádám FARKAS: Issues of the armed defence system of the state in the light of contemporary threats, *Military Law and War Law Review* 2015/1, 140-142.

⁷ István SIMICSKÓ: The origins and current issues of hybrid warfare, In: *Military science*, 2017/3-4.

⁸ István SIMICSKÓ: Enhancing protection against terrorism by expanding special legal categories, In: *Military science* 2016/3-4. 113.

⁹ Lóránt CSINK: "When should the legal order be special?" *Iustum Aequum Salutare* 2017/4, 7-16.

antee security for its citizens and to create the conditions for a safe life. The political power of any given time is judged by its attitude how security is comprehended and the way in which it fulfils its duty to ensure the security of its citizens.

So in a decade following the 1989 regime change, the Hungarian Parliament established a legal framework in which the three main pillars of protection of the country and its citizens became the spheres of defence, law and order and national security, with different solutions, but under the direction of Government and control of Parliament. This sectoral division was, however, characterised by very strong restrictions and delimitations due to historical incongruities prior to the regime change, i.e. the legal basis of the system was that the individual actors performed their tasks independently and their cooperation was highly controlled, and in the case of Hungarian Defence Forces, on home territory and in peacetime, it was limited to the cooperation in disaster management, with the exception of military law enforcement, object protection, fire control and airspace management. This approach was sustainable for a few years, given the experience of the historical crisis preceding the change of regime and the peaceful world view expected at the end of the Cold War, and led the legislator to decide to limit the comprehensive application of state's defence capabilities essentially to the period of the special legal order, while the enforcement of defence and security interests and specificities within the non-armed state's system of tasks was to be moderately represented.

From this perspective, therefore, Parliament, first in the light of the South Slav crisis, then in the light of the joining of the North Atlantic Treaty and the 2001 US call for Article 5 of the Washington Treaty, maintained the approach that responded to crises not directly affecting our country by expanding the special legal order and maintained the sharp demarcation of 1989 in the field of defence and security guarantees. The revision of this system did not appear justified even at the time of the drafting of Fundamental Law, since apart from the wave of terrorism in the early 2000s, there were no significant and repetitive fluctuations in our security environment, while Hungary sought to enforce its increasingly complex – i.e. multi-dimensional rather than military-dominated – concept of security, which had been growing since the second half of the 20th century, through cooperation between organisations.

2. SPECIAL RULE OF LAW IN FUNDAMENTAL LAW

Fundamental Law, which replaced the previous Constitution and was adopted by the National Assembly, entered into force on 1 January 2012, opening a new chapter in the development of the Hungarian Constitution and introducing the terminology of the special legal order into the Hungarian legal system, while at the same time it took over the substance and structure of the regulation on qualified

periods from the previous legislation. The legislator stated in its explanatory memorandum to Fundamental Law that the classical principles of constitutionality may be suspended or restricted in a special legal order, but at the same time it also stated that any deviation from the principles laid down in Fundamental Law, from the most important institutions of democracy, may not be regulated by any legislation other than Fundamental Law. An important guarantee is that the application of Fundamental Law cannot be suspended in the special legal order, and the functioning of the Constitutional Court cannot be restricted. The exercise of fundamental rights may be restricted or suspended to an extent different from the peacetime rules, but certain fundamental rights (such as life or human dignity) remain unaffected in these cases.¹⁰

Fundamental Law regulates the special legal order in a separate chapter, Articles 48-54. The detailed rules applicable in the special legal order are laid down in cardinal acts, such as Act CXIII of 2011 on defence and the Hungarian Defence Forces and on measures that may be introduced in the special legal order, and Act CXXVIII of 2011 on disaster management and the amendment of certain related acts. In the beginning, five types of special legal order were regulated: a state of national crisis in the event of an international conflict, a state of emergency of domestic origin, a state of emergency in the event of riots or civil war, a state of preventive defence in the event of a war threat before the declaration of a state of national crisis, a state of emergency in the event of an unexpected external attack, and a state of emergency in the event of a natural disaster or industrial accident endangering the safety of life and property.¹¹

World politics and the global threat have changed enormously since the turn of the millennium. The Syrian civil war began in March 2011, leading to the collapse of the country's administration and dividing the country into provinces dominated by factions patronised by foreign powers, on the ruins of which the Islamic State terrorist formation has risen. Climate change, which is also linked to globalisation processes, has generated serious changes, which are still not fully visible, particularly in African and Middle Eastern countries, whose overcrowded

¹⁰ T/2627. with explanatory memorandum – Bill on Fundamental Law of Hungary, general explanatory memorandum to Articles 47-53

¹¹ About the development of the constitutional protection of property, see: Téglási, András: A tulajdon alkotmányos védelmének kialakulása (Development of the constitutional protection of property) JOGTUDOMÁNYI KÖZLÖNY vol. 63. no. 7-8 pp. 361-374.; About the constitutional protection of property with special respect to property ownership guaranteed constitutionally in the field of agriculture, see: Téglási, András: Hogyan védi Alkotmányunk a mezőgazdasági termelők tulajdonhoz való jogát? = How is property ownership guaranteed constitutionally in the field of agriculture? AGRÁR- ÉS KÖRNYEZETJOG 4 : 7 pp. 18-29.; Téglási, András: The constitutional protection of agricultural land in Hungary with special respect to the expiring moratorium of land acquisition in 2014. JOGELMÉLETI SZEMLE vol. 15.no. 1 pp. 155-175.

populations, fleeing hunger, seeking a livelihood or simply seeking the financial security offered by advanced social welfare systems,¹² or motivated by external political or economic interests, have chosen to migrate to Europe. The author already warned in 2008 that one of the great challenges of our time is migration, which, if it reaches critical mass, could become a situation of a qualified temporary crisis.¹³ A direct consequence of these factors is the outbreak of the migration crisis in 2015, which has had a major impact on the world, and especially on Europe. Róbert Bartkó, analysing data from EUROPOL and FRONTEX, concludes that the phenomenon of illegal migration, which is characterised by masses of migrants with unchecked, unidentified backgrounds and intentions, who are uncooperative with local authorities and are typically young men¹⁴, is very much in favour of terrorist organisations.¹⁵

So the security environment in Europe, and directly in Hungary, has been on a dynamic and negative path of change compared to the past, as threats of overlapping but of very different nature, requiring a different sectoral focus, have followed each other. The Arab Spring, followed by the massive wave of illegal migration, the armed conflict in Ukraine and the hybrid events that preceded them, the recent wave of terrorism in Europe, and the emergence and growth of cybercrime and attack capabilities in cyberspace, as a result of the development of information technology, have required a new era of change, but in parallel with the management of specific crises, on a case-by-case basis, in response to the successive threats that still exist in our region. This changed security environment has made it necessary, on the one hand, to strengthen the cooperation between the armed forces and law enforcement agencies and, on the other, to reinforce the capacity for preparation and action for defence and security purposes in the field of non-armed activities. The legislator met this challenge primarily by establishing a normal legal crisis regulation, i.e. it did not generally allow cooperation between armed forces, but rather opened it up to Government's decision and responsibility in the context of dealing with specific crisis situations, i.e. in line with the domestic approach by adapting to the guarantees of the last thirty years, while gradually strengthening the operational aspect.

¹² About the social welfare system of Hungary and the constitutional protection of social rights, see: Téglási, András: Social Security in Hungary Before and After the Fundamental Law of 2012 in Light of Jurisprudence of the Constitutional Court. *OSTEUROPA-RECHT* vol.64.no.2. pp. 271-290.; Téglási, András: A szociális állam "erodálása" vagy megmentése, avagy szociális biztonság az új Alaptörvényben ("Eroding" or saving the welfare state, i.e. the social security in the new Fundamental Law). *JOGELMELETI SZEMLE* (Journal of Legal Theory) vol. 12.no. 4.

¹³ István SIMICSKÓ: The organisational, jurisdictional and management system of national defence and mobilisation in classified periods, Doctoral thesis, ZMNE-HTK 2008. p.24.

¹⁴ According to EUROSTAT data (source: Immigration by age and sex – Products Datasets – Eurostat (europa.eu))

¹⁵ Róbert BARTKÓ: The link between illegal migration and terrorism in the light of EUROPOL and FRONTEX reports

The involvement of the Hungarian Defence Forces in the handling of the crisis situation caused by mass immigration, in addition to the strengthening of the military police presence, the sixth amendment of Fundamental Law of Hungary introduced the institution of the terrorist emergency as a new special legal order with effect from 1 July 2016, which can be applied in the event of a significant and imminent terrorist threat or terrorist attack. The justification for the amendment states that the security environment in the transatlantic area, in Europe and in Hungary has changed radically and that *“new types of security challenges have emerged in the world which cannot be adequately addressed by the special legal order responses to previous classical inter-state threats in an effective and proportionate manner.”* It also stated that *“new types of security challenges cannot be fully integrated”* into the existing system of special legal orders.¹⁶

The establishment of a special legal framework in case of terrorist threats, the strengthening of the organisational and cooperative framework for counter-terrorism, the creation of a national defence emergency, and the strengthening of civilian and military cyberspace operational capabilities through legislation marked a transitional period. The starting point of this transition is the system based on sharply demarcated sectors, which has been in place since 1989, while the intended end point is the development of a coordinated defence and security system, in line with a complex security approach, the first pillars of which were imposed by the handling of specific crisis situations.

3. NEW CIRCUMSTANCES REQUIRE NEW SOLUTIONS

Neither the party-state constitution, which was amended at the time of the regime change, nor Fundamental Law, which replaced it, brought about any significant change in the Hungarian special legal order. One of the fundamental reasons for this is that in the last thirty years there has been no event in Hungary which, except in the case of the emergency, would have justified the use of available special legal order cases. An example of the declaration of a state of emergency in the past was the partial declaration of a state of emergency during the major floods of 2013, which was limited to the affected area of the country.¹⁷

The coronavirus pandemic, which developed into to a global epidemic in 2020, and its currently foreseeable social and economic consequences, should already make responsible decision-makers reflect on how effective the protection strategies, including specific legal orders, can be in this changed environment. Recognising the possible consequences of the first wave of the pandemic and the

¹⁶ Bill T/10416. with explanatory statement – Sixth Amendment to Fundamental Law of Hungary

¹⁷ Government Decree 177/2013 (4.VI.) on the declaration of a state of danger and the actions to be taken in connection with it

need for rapid and effective response, the Hungarian government, for the first time on 11 March 2020¹⁸ and during the second wave of the pandemic on 3 November 2020¹⁹, exercised its powers under Article 53(1) of Fundamental Law, in the light of the 2011 Act on Disaster Management and the Amendment of Certain Related Acts. CXXVIII of 2011, *“to avert the consequences of the SARS-CoV-2 coronavirus pandemic (hereinafter referred to as the coronavirus pandemic), which is a threat to the safety of life and property, and to protect the health and life of Hungarian citizens, a state of emergency for the entire territory of Hungary”* declared.

Pál Kádár summarized the necessity that the scientific community has so far expressed in connection with the review of the special legal order cases²⁰, because the current legislation is complicated, there is a danger that an over-regulated special legal order will lose its special character. There is a need to review the powers that have been revived during the special legal order, to define precisely who is to receive them and to designate another body/person to replace them. In a 2018 analysis, Aaron Ösze considered it appropriate to maintain three categories of cases, namely a state of national crisis, a state of emergency and a state of danger, in the event of a review on the basis of the above reasons.²¹

The experience of the introduction of the special legal order in 2020, the rapid and effective implementation of the related epidemic control and economic protection measures, as well as the new types of security policy challenges such as the rise of hybrid warfare motivated the Hungarian legislator to review and modernise the rules of the special legal order. The security threats of the 21st century, which the state must address primarily through its defence and security system, are increasingly diverse, dynamically changing and interconnected, relying heavily on changing technological and social conditions, and thus require the strengthening of the readiness of state bodies, the coordinated use of state capabilities and accelerated decision-making.

The ninth amendment to Fundamental Law of Hungary will put the special legal order on a new footing effective from 1 July 2023. The aim of the change was to provide Hungary with a solution for dealing with extraordinary situations that is flexible and more effective than the current one, and that meets the security challenges of this century, while providing adequate guarantees under the rule of law. Together with a number of other factors, the amendment to Fundamental Law also draws attention to the need and urgency of reviewing the legislative environment based on the security situation of the 20th century, as a suddenly

¹⁸ 440/2020 (III. 11.) Government Decree on the declaration of a state of danger

¹⁹ 478/2020. (XI. 3.) Government Decree on the declaration of a state of danger

²⁰ Pál KÁDÁR: The renewal of the special legal order and the Hungarian Military Law and Military Law Society, Military Law and Military Law Review 2020/4, 7-34.

²¹ Áron ÖSZE: Analysis on the effectiveness of the Hungarian special legal order regulation, In: Discourse, Vol. 8, No. 2. 33-44.

emerging crisis in the public eye may nowadays require crisis management measures other than those normally applied. Therefore, it is not only in Hungary's best interest, but also in its expectations as a member of NATO, to develop its national resilience and crisis management capabilities.

The future certainly holds unknown global challenges for the world, Europe and Hungary. The Hungarian legislator had to decide whether to maintain the current more specific regulation, i.e. to maintain the applicability of separate specific legal disciplines for each category of threat, or to move towards a more general regulation, recognizing the fact that the legal environment can only follow the wide spectrum of possible threats, naturally because the threat always appears before the recognition of the existence of the threat, which leads the legal environment to adapt. András Jakab and Szabolcs Till pointed out that the more complex the range of causes becomes and the more cases the concept of a special legal order covers, the more the unpredictability arising from the lack of clarity of the legislation is likely to increase. Their conclusion is that the regulatory response to the new challenges of the external environment will require a review of the sub-categories, a process which could ultimately lead to a simplification of the system.²² According to Lóránt Csink, the causes of the special legal order cannot be defined in an exact way, as the range, frequency and social significance of the phenomena giving rise to them are constantly changing. He argues that regulation must take account of the variability of the range of phenomena. In examining the stability of regulation, he pointed out that only non-detailed regulation can remain stable. He concluded that, at the constitutional level, only a brief mandate is needed to introduce a special legal order and designate a body to exercise powers, which should only provide a framework for the measures that can be taken, while at the same time establishing an effective political and independent legal control mechanism.²³ In examining this issue, it should be noted that in security environment of our times, a high degree of differentiation can also create difficulties both in terms of preparation and rapid decision-making in complex situations. Parliament has opted for a more general and simpler solution, and therefore more stable in the long term, by replacing the previous six different special legal regimes with three more streamlined categories, namely the state of war, the state of emergency and the state of danger, adapted to modern challenges.

The new regulatory reform reinforces a complex, whole-of-government approach, ensuring the coordinated preparation and deployment of state capabilities to the fullest extent. The principles of graduality, necessity and proportionality, as well as transparency and streamlining in terms of preparation and implemen-

²² András JAKAB – Szabolcs TILL: X. Constitutional Protection – Special Legal Order, JAK-PPKE. 1033-1072.

²³ Lóránt CSINK: "When should the legal order be special?" *Iustum Aequum Salutare* 2017/4, 7-16.

tation, are applied, while the executive should be given more extensive and flexible rights to protect. The amended Fundamental Law clarifies that a state of war is a special legal order requiring primarily a military response, a state of emergency is intended to deal with conflicts within a country, and a state of danger can continue to be declared to deal with disaster-type crisis situations. Parliament retains the power to declare a state of war and a state of emergency, and in the case of a state of danger, the National Assembly may authorize the extension of the state of danger, which may be declared by Government for a period of thirty days, i.e. it may provide for the continued maintenance of the special legal order if necessary. In all special legal order situations, Government is placed in a position of special legal order decision-maker, the Defence Council is abolished and the emergency powers of the President of the Republic are redefined. As a criticism of the Defence Council, Szabolcs Till pointed out that it is the bearer of operational uncertainty, since it is meant to deal with the greatest threat to the operation of the state, but – in the absence of a peacetime function – it has no opportunity to acquire operational experience.²⁴ The novelty of the amendment is not that Government will determine the content of the generally binding rules of conduct during the special legal order, which is the case under normal circumstances, but that it can do so without Parliament in order to act more effectively. According to the legislator's explanatory memorandum, "*following the proclamation of a special legal order, it is necessary to ensure rapid, operational and politically and legally responsible decision-making, which Government is well placed to do in the Hungarian constitutional system.*"²⁵ In addition to the above, the Ninth Amendment to Fundamental Law lays down, as an important guarantee rule and a novelty compared to the previous legislation, that "*Government shall, during the period of special legal order, take all measures to ensure the continuous functioning of Parliament*"²⁶, i.e. the President of the Republic, and Constitutional Court,²⁷ whose uninterrupted functioning Fundamental Law has always guaranteed in times of special law, National Assembly also has a permanent control function over Government, which is endowed with extraordinary powers and extraordinary responsibilities which naturally go hand in hand with them. Not only

²⁴ Szabolcs TILL: "Special Legal Order" in András JAKAB – Balázs FEKETE (eds.): Internet Encyclopaedia of Legal Studies, 2019.

²⁵ T/13647. with explanatory memorandum – Ninth amendment to the Fundamental Law of Hungary, Article 11

²⁶ Ninth Amendment to the Fundamental Law (22 December 2020) Article 52(3)

²⁷ About the Constitutional Court of Hungary, see: Téglási, András: Az Alkotmánybíróság. In: Téglási, András (szerk.) Az állam szervezete. Budapest, Dialóg Campus Kiadó pp. 161-180.; about the Constitutional Courts in V4 countries, see: T., Kovács Júlia – Téglási, András: Alkotmánybíráskodás visegrádi szomszédainknál. PRO PUBLICO BONO: MAGYAR KÖZIGAZGATÁS; A NEMZETI KÖZSZOLGÁLATI EGYETEM KÖZIGAZGATÁS-TUDOMÁNYI SZAKMAI FOLYÓIRATA 1 pp. 90-104.

the rules applicable under the special legal order, but also the rules of ordinary legal order applicable under special legal order, provide a legal basis for this. The detailed rules are also to be laid down in a cardinal law, according to the amendment.

Such cardinal laws are Act CXIII of 2011 on defence and the Hungarian Defence Forces and on the measures that may be introduced in the special legal order, and Act CXXVIII of 2011 on disaster management and the amendment of certain related acts, which detail the constitutional guarantee enabling rules of Fundamental Law on the subject of the special legal order. In this context, these laws define the extraordinary measures that may be introduced by government, the addressee of the special powers in a special legal order. The territorial requirements and tasks for the implementation of these measures are determined by the territorial bodies of the defence administration – the county and metropolitan defence committees – in their respective areas of competence, in accordance with the provisions of the law.

As a result of the amendment of Fundamental Law – taking into account the complexity of the related implementation rules and the time requirements for legislation and preparation and the fact that defence and security administration must be operated – it is necessary to ensure the creation of the related cardinal laws as soon as possible and the necessary peacetime manageability of the legal institutions that disappear from the level of Fundamental Law (terrorist emergency, preventive defence situation, unexpected attack), as well as the creation and clarification of crisis management rules.

In conclusion, the renewal of security and safety legislation cannot be achieved without reviewing and harmonising the legislation applicable to crisis situations in all sectors. In this context, it is necessary to review the scope of the rules affecting defence, law enforcement, national security and crisis management, and to examine the need for new provisions in this area, in the light of technological developments and national and international experience in recent years. With regard to the functioning of public authorities and bodies, the existence, modernity, applicability and development of rules on crisis situations and special legal procedures should be examined. With regard to the specific coordination and advisory bodies, analyse and assess their possible tasks, obligations and cooperation in the context of defence and security regulation, and, with regard to the rules on legal restrictions, review the existence, necessity and conditions for the possibility of restricting them in the interests of national defence, law enforcement and national security, and the need to create additional rules to strengthen the country's resilience.

With the Ninth Amendment to Fundamental Law, the Hungarian Parliament has expressed its belief that Hungary has entered a new era of protection and security in the face of the external environment and technological developments. The essence of this change of era is that, on one hand, in the field of armed defence, while maintaining and developing sectoral specificities, it is necessary to strengthen overall governmental coordination of the sectors and reduce regulatory duplication,

and on the other hand, increased attention must be paid to strengthening security and defence awareness and preparation in non-armed activities, both in the state and in social and economic terms.

4. SUMMARY

In today's challenging world, the very rapid escalation of crisis situations is a serious risk, which may require the almost immediate declaration of a special legal order without any substantial preparation time, in order to enable the relevant state bodies to respond to the threat as quickly as possible. The crisis in Ukraine, the terrorist attacks against France and the coronavirus epidemic in Europe in recent years have provided clear examples of this.

The use of special legal disciplines is perhaps the only realistic protection of the rule of law in the event of trouble. Even during the period of application of the special legal order, the rules laid down in the constitution and the cardinal laws ensure the normal periodic system of checks and balances, such as the role of Parliament and its committees, or the role of the President of the Republic in relation to certain acts of governance. In certain periods of the special legal order, the exercise of the constitutionally designated centre of power by introducing extraordinary measures ensures the sovereignty of the country, its functioning and the elimination of threats to the safety of life and property of the population.

Both the recent experience of crisis management and the directions of the ninth amendment to Fundamental Law support the view that the normal – everyday – rules of defence and security must interact closely with the normal legal framework for crisis management and the special legal framework for the operation of the special legal framework in order to operate effectively and to deal with rapidly escalating threats.

The recent emergence of new security challenges, including global terrorism, mass illegal migration, the rise to prominence and increasing sophistication of hybrid warfare, pandemics, natural disasters caused by climate change, among others, make this a particular necessity, to review and update the specific legal order rules, which can be defined as a new stage in the evolution of the constitution, since the core of the rules currently in force was the result of a long process over the previous century, building on its roots in legal history, and was given a more coherent form in 1989, with the change of regime. However, it was born out of fears of the return of the party state and thus became, from today's perspective, over-regulated and unduly cumbersome. As the emergence and scale of new types of security challenges did not justify it at the time, Fundamental Law took over this basis in 2011. Subsequently, the legislator was forced to respond to a number of new types of threats, which led to the codification of the scope of the terrorist threat.

Like the Spanish flu pandemic of a century ago, the 2019-21 coronavirus pandemic has no regard for national borders or social status. The seriousness of the situation is illustrated by the fact that, while a hundred years ago the basic standards of protection were not in place, today we have modern medicine, the legal environment to deal with the problem properly, and a consistent executive with the capacity to act, despite all of this, nearly 30,000 people have died of the disease in Hungary by the end of this study. Among the victims we have had to say goodbye to celebrities such as the poet Géza Szöcs, the composer Ferenc Balázs, the musician István Bergendy and the Olympic champion sports shooter Diána Igaly. Making the wearing of masks compulsory, ensuring proper hygiene, restricting access to public places, introducing curfews and finally providing the population with vaccines quickly are essential elements of effective operational control, which Hungary has successfully applied.

Based on the experience gained from the emergency legal system introduced during the pandemic, and guided by the security policy considerations gathered so far, Parliament, through the Ninth Amendment to Fundamental Law, has eliminated a significant part of the applicable cases, thus carrying out a comprehensive reform of the system and responding to the need for simplification, which is also prominent in the legal writings, by choosing a flexible and stable solution to the known and unknown challenges, meeting the requirement best described by Szabolcs Till: the constitutional system of rules must ultimately remain operational in a hybrid environment.²⁸

Hopefully, there will be no precedent for the future application of special rules of law, but the legislator has a duty to identify the challenges and review these rules regularly, bearing in mind the principle of “hope for the best but prepare for the worst”. As the detailed rules are currently laid down in cardinal laws, which makes the rules fragmented and difficult to understand, a further simplification may be advisable, as suggested by Pál Kádár.²⁹ Some areas that have been regulated in parallel or have been poorly modernised in recent years (certain tasks of civil protection, economic and material services, defence commission system, special legal powers) should be brought under a single governmental umbrella and brought under a single regulatory framework. The establishment of a consolidated crisis management code, which would set out the tasks and responsibilities of the relevant bodies and provide a framework for central coordination, including national security, civil protection and defence crisis management, would create a new basis for the sectors and organisations concerned.

²⁸ Szabolcs TILL: Future chances of simplification of the special legal order category system, *Iustum Aequum Salutare* 2017/4, 55-75.

²⁹ Pál KÁDÁR: The renewal of the special legal order and the Hungarian Military Law and Military Law Society, *Military Law and Military Law Review* 2020/4, 7-34.

REFERENCES

- Róbert BARTKÓ: The Relationship between Illegal Migration and Terrorism in the light of EUROPOL and FRONTEX Reports, In: *Law – State – Politics*”, academic publication of the Deák Ferenc Faculty of Law and Political Science of the Széchenyi István University (source: Bartko.indd (sze.hu))
- Lóránt CSINK.: When should the legal order be special? *Iustum Aequum Salutare*, 2017/4, 7-16.
- Ádám FARKAS: Issues of the Armed Defence System of the State in the Light of Contemporary Threats, *Military Law and Military Law Review*, 2015/1, 140-142.
- Ádám FARKAS – Pál KÁDÁR: The evolution of the special legal order and its military defence implications. In Ádám FARKAS – Pál KÁDÁR (eds.): *The public law foundations of Hungary’s military defence*. 2016. Zrínyi Kiadó, Budapest 303-307.
- Ádám FARKAS – Roland KELEMEN (eds.). *Between Szküllä and Kharüdbis – Studies on theoretical and pragmatic issues of the special legal order and its international solutions*. Hungarian Military Law and Military Law Society, Budapest, 2020.
- András JAKAB – Szabolcs TILL: The special legal order, In: László TRÓCSÁNYI – Balázs SCHANDA (eds.): *Introduction to constitutional law; The Fundamental Law and Hungary’s constitutional institutions*. 2013. HVG-ORAC newspaper and book publisher, Budapest, 472-487.
- András JAKAB – Szabolcs TILL: X. Constitutional Protection – Special Legal Order, *JAK-PPKE* 1033-1072.
- András JAKAB (ed.): *Commentary on the Constitution I*. Századvég Publishing House, Budapest, 2009. 231-666.
- András JAKAB: *The emergence and practical consequences of the new Fundamental Law*. Budapest, HVG-Orac, 2011.
- Pál KÁDÁR: The renewal of the special legal order regulation and the Hungarian Military Law and Military Law Society, *Military Law and Military Law Review*, 2020/4, 7-34.
- Roland KELEMEN: Some dogmatic problems of the special legal order system of the Fundamental Law – with a view to the exceptional power rules of the constitution of the Visegrád states, *Military Law and Military Law Review*, 2017/1-2, 37-68
- László LAKATOS: The special legal order and the regulation of national defence, *MTA Law Working Papers*, 2014/49.
- Áron ÓSZE: Analysis on the effectiveness of Hungarian special legal regulation in general, In: *Diskurzus – the scientific journal of the Batthyány Lajos Széchenyi István University’s Deák Ferenc Faculty of Law and Political Sciences – Vol.8*. 33-44. 2018.
- István SIMICSKÓ: Enhancing the protection against terrorism by expanding the special legal order categories, In: *Hadtudomány*, 2016/3-4.
- István SIMICSKÓ: *The organisational, jurisdictional and management system of national defence and mobilisation in classified periods*, PhD thesis, ZMNE-HTK, 2008.

István SIMICSKÓ: The antecedents and actualities of hybrid warfare, In: Hadtudomány, 2017/3–4.

Szabolcs TILL: The future chances of simplifying the special legal order category system, Iustum Aequum Salutare, 2017/4, 55-75.

Szabolcs TILL: Special Legal Order, In András JAKAB – Balázs FEKETE (eds.): Internet Encyclopedia of Legal Studies, 2019.

Legal sources

Fundamental Law of Hungary

Bill T/2627. with explanatory memorandum – On the Fundamental Law of Hungary

Bill T/10416. with explanatory statement – Sixth Amendment to the Fundamental Law of Hungary

Ninth Amendment to the Fundamental Law of Hungary (22 December 2020)

Bill T/13647 with explanatory memorandum – Ninth Amendment to the Fundamental Law of Hungary

Act XXXI of 1989 amending the Constitution

Act CVII of 1993 amending the Constitution

Act XXXIV of 1994 on the Police

Act CIV of 2004 amending Act XX of 1949 on the Constitution of the Republic of Hungary

Act CXIII of 2011 on Defence and the Hungarian Defence Forces, and on Measures that may be Introduced in Special Legal Regimes

Act CXXVIII of 2011 on Disaster Management and the Amendment of Certain Related Acts

Government Decree 177/2013 (4.VI.) on the declaration of state of danger and the measures to be taken in the course of it

Government Decree 40/2020 (11.III.) on the declaration of state of danger

Government Decree 478/2020 (3.XI.) on the declaration of a state of danger

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Промена изазова и метода управљања кризама у оквиру стабилне владавине права – уставни одговор Мађарске на изазове 21. века

Сажетак: Одбрана и безбедносн Мађарске национално је питање на коме се заснивају оцетанак и развој нације, заједнице и права појединца. Приоритетни циљ је јачање безбедности земље и нације и испуњавање обавеза Мађарске у систему међународног савеза. С обзиром на то, конституирано функционисање државне организације, извршавање задатака безбедности и одбране и, ако је потребно, ограничење права грађана у уставним оквирима мора бити осигурано одговарајућом оперативном ефикасношћу и у попуноћи у складу са гаранцијама владавине права, чак и у контексту периода мира и периода посебног правног поретка дефинисаних у Основном закону, и током координисане припреме и одбране од разних претњи, њиховој, ушцајној и офанзивној понашања заснованој на природним и цивилизацијским догађајима и људским радњама.

Безбедносни изазови 21. века и окружење које се брзо мења захтевају нови регулаторни оквир који може да обезбеди флексибилан, транспарентан начин на који одбрамбено-безбедносни систем може да функционише у мирнодојско и у доба посебног правног поретка. Оквир за припрему државних органа мора бити обезбеђен и мере према којима надлежни органи могу деловати у периоду посебног правног поретка треба да буду дејално дефинисане, како би се функционисање земље и њен правни поредак што пре вратили у нормалу након укидања разлога посебног правног поретка. Важан је субстабилности демократске државе да слободно изабрано законодавно тело, Парламент, одређује садржај и форму случајева у којима је могуће одступање од њених правила. Постоје различите врсте посебног стајуса, па би концентрација моћи требало да буде сprovedена само у мери у којој је то неопходно за решавање ситуације, у складу са принципом пропорционалности. Инститиуције посебног правног поретка су, дакле, институције привремене и њихове природе које могу бити развијене као *ultima ratio* државних инструмената у ситуацији нужности, под условом да су испуњени њихови уставни услови.

Кључне речи: посебан правни поредак, квалификовани период

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