

First Corruption Monitoring Report

In September of 2020, K-Monitor and the HCLU launched a joint corruption monitoring program with the goal to evaluate in a report published every three months the status of state corruption and the efforts made towards the dismantling of the rule of law. In Hungary, the dismantling of the constitutional state and the elevation of corruption to public policy happens simultaneously, in strong correlation with one another, generally under the guise of some mission carried out for the public good. Currently this is the action against the crisis caused by the coronavirus. The aim of the two organizations is, by combining their experiences from their own area of expertise, to shed light on the corrupt processes taking place under the surface of crisis management. Furthermore, to obtain a credible evaluation of these multifaceted measures, renowned experts from different fields will occasionally comment on the report, and these evaluations will also be published in the analysis.

The reports are drafted on the basis of a uniform methodology, centred around a current topic: the first report examines the events of the first phase of the coronavirus pandemic, foremost assessing the results of the special legal order legislation. Our hypothesis published in our first report is that during the appearance of the coronavirus pandemic in Hungary and the management of the first wave, the government took measures that aided them in solidifying their own power (among other measures), creating advantages for their economic ingroup, and decreasing the options of their political opponents via administrative and fiscal means.

The reports recurrently examine predetermined criteria, but always react to the current, significant events as well; our aim is to give the most comprehensive analysis possible. In the interest of permanence, we have composed the seven positive statements organized into two separate but related groups, the enforcement of which we will examine in every report, evaluating each measure in question based on these requirements. The statements, which are indicated by number beside each analysed measure and phenomenon according to which requirement the given measure or occurrence violates, are the following:

The topic of corruption and the abuse of power

1. The government must not use public funds to strengthen, or maintain their own power.
2. The government may not have public assets at their disposal in such a way that puts a group of the political community (eg. local governments) in a disadvantageous

position based on political commitment or creates a disadvantage for autonomous organizations with the aim of encroaching on their autonomy.

3. The government may not provide publicly funded resources to (economic) role-players sympathizing with them based solely on this trait.

The topic of the rule of law

4. The government is obligated to operate transparently, to inform the citizens of their decisions and the justifications behind them in such a way that allows for the audit of public authority.
5. The government is obligated to refrain from all behaviour that diminishes the existing level of independence in regards to local governments and independent state organizations or undermines the guarantees of this independence.
6. Apart from the government's general obligation in this direction, they are especially obligated to refrain from undermining the guarantees of the constitutional state and the responsible management of public funds by citing crisis management aims.

The time-frame of the report, summary

On March 11, 2020 in Government Regulation 40/2020. (III. 11.) a state of emergency was declared for the whole country of Hungary. This was one week after the first cases of coronavirus were confirmed and registered in Hungary¹. After the declaration of the state of emergency, the special legal order legislation began, while vice-prime minister Zsolt Semjén also proposed draft law no. T/9790² which, even before it was passed, was known as the 'rule by decree' law, enabling the government to take further measures beyond the extraordinary measures and rules defined in the amendment of Act CXXVIII of 2011 on disaster relief and associated laws in the state of emergency to suspend the application of certain laws in order to guarantee the protection of citizens' life, health, personal safety, the safety of assets and rights, as well as the stability of the national economy along with taking other extraordinary measures. The most important critique of the law (Act XII of 2020 on protection against the coronavirus), is that it did not contain the temporal endpoint of the authorization or its maximum duration, instead, it entrusted the decision to the national

¹ <https://koronavirus.gov.hu/cikkek/ket-koronavirusos-beteg-van-magyarorszagon>

² <https://www.parlament.hu/irom41/09790/09790.pdf>

assembly and whether it believes the maintenance of the authorization to be justified.³ The critiques discussed whether it could be expected of the governmental party fraction with two-third (qualified majority) to rule independently of the government or in opposition to it by revoking the authorization.

The proposal about the termination of the state of emergency handed in by Gergely Gulyás, the Minister of the Prime Minister's Office⁴ was accepted on June 16, 2020 by the National Assembly⁵, which by that became part of the Hungarian legal system as act LVII of 2020 on the termination of the state of emergency. The National Assembly also accepted the proposal that upholds several measures introduced during the state of emergency; while on June 18, 2020, the state of “pandemic preparedness” was introduced.⁶ These measures predicted that the government wants to utilize the expanded authority even after the cessation of the special legal order, even if this does not afford them expansive possibilities as the state of emergency legislation did.

On August 28, 2020, the government decided to close Hungary’s borders from September 1 onwards, under which foreign citizens may only enter in extraordinary cases; this order is contained in Government Regulation 407/2020. (VIII. 30.) on the temporary reinstatement of border control. The scope of persons entitled to special entry was determined during the course of September, after the declaration of the border closing. The analysis of this measure will be the topic of our next report.

The ‘rule by decree’ act (officially Act XII of 2020 on protection against the coronavirus) provided the government with expanded (administrative) discretion, which simultaneously opened the path towards taking measures more quickly than previously and without including the public or informing public opinion, all this in the name of combating the pandemic. Apart from the expanded discretion provided by the ‘rule by decree’ act, it became especially worrisome that the government would take anti-democratic measures, ones that further diminish the constitutional state, strengthen their power, and expand their in-group and clientèle, and that these measures will be carried out under the guise of matters explicitly related to the pandemic, or taking action against the economic downturn related to the pandemic all while the media’s attention is mainly concerned with the events

³ <https://tasz.hu/cikkek/nem-a-korlatlan-hatalom-az-orvossag>

⁴ <https://www.parlament.hu/irom41/10747/10747.pdf>

⁵ Act LVII of 2020 on the termination of the state of emergency

⁶ Act LVIII of 2020 on the temporary regulations related to the termination of the state of emergency and the state of pandemic preparedness

related to the pandemic. The legislation in connection with the cessation of the special legal order only assuaged these fears to a small degree. Based on our analyses, our hypothesis that the government utilizes its authority related to the coronavirus for aims that are in conflict with the authorization has been confirmed.

The cases presented in the study show that the “combat against the pandemic” has become a recurring basis that would be, without differentiation, used to justify even opposing measures: while the politically advantaged were afforded an uninterrupted stream of basic and exceptional free benefits, investment supports, funds on imperative grounds of the saving of the economy, while the government’s real or imagined enemies were often deprived of investment resources and were called upon to show solidarity by the maintained principle of combating against the pandemic. This “combat against the pandemic” unfortunately also meant that it was unnecessary, in fact, almost rude to ask questions to audit the government, and substantive answers were not to be expected in these cases. This resulted in billions of public funds being spent without transparency in relation to acquisitions exempt from the procedures of public acquisitions.

Furthermore, previously initiated processes continued in the background: the documents of the Budapest-Belgrade railway line, built with the cooperation of Lőrinc Mészáros’s scope of interest, were classified; the minister of external economy and foreign affairs spent his holidays on the yacht of a Hungarian oligarch regularly obtaining government tenders, and considered it to be a private matter. Among those who are profiting from the Kisfaludy Program, a tourism development on a historic scale, we again find Lőrinc Mészáros, a person supported by the prime minister and the richest man in the country.

All this begs the question, whether the aim behind the constant support of the in-group is connected to preparations for the 2020 spring elections. The accumulation of resources close to the government cannot be suspended just because of the crisis, as it is highly possible that greater efforts will be needed than before to maintain the voters of the government party in a country stricken by an economic crisis.

We must also mention the anti-corruption efforts made in the past six months. After a two-year hiatus, in June, the government accepted the new strategy for the prevention of corruption⁷, which was drafted essentially with the exclusion of the public. Even so, the

⁷ [https://korrupciomegelozes.kormany.hu/download/a/21/a2000/1328_2020_\(VI_19_\)%20Korm_hat%C3%A1rozat.pdf](https://korrupciomegelozes.kormany.hu/download/a/21/a2000/1328_2020_(VI_19_)%20Korm_hat%C3%A1rozat.pdf)

<https://korrupciomegelozes.kormany.hu/download/f/ff/92000/STRAT%C3%89GIA%20k%C3%B6zz%C3%A9tett.pdf>

strategy contains a few constructive elements, for example, that it defines corruption not only in the traditional, narrow sense of acts of bribery but as “all social phenomena by which someone abuses the power they are entrusted with”. At the same time, however, it does not mention the building of clientele at the expense of public funds, and sensitive political areas such as public funding and party funding received unduly little emphasis.

A small positive is that the government modified the Criminal Code in accordance with the OECD recommendation, which means that in the future persons working for foreign public organizations and state or local government companies will be considered foreign officials.

Detailed analysis

Maladministration regarding the information and data procession practices of the Operational Staff

Sequence number of the criteria concerned: 4, 5

One of the most concerning transparency qualms in the epidemiological situation is in connection with the disclosure practices of the Operational Staff. At the beginning of the pandemic, based on data protection arguments, the Operational Staff refused to provide the public with data about the regional distribution of those infected.⁸

From the announcement of the first case in Hungary it took nearly a month to disclose the territorial (county) distribution of those infected to the public, while in the public communication for example the nationality of the infected was highlighted. To date, no more detailed breakdown of the county distribution has been officially published. However, on the koronavirus.gov.hu information page, and in the public communication of the Operational Staff there is a clear distinction between the cases in the capital and the cases outside Budapest (“rural areas”), with the help of visual aids as well. Allegedly this was politically motivated, especially in the weeks prior to the peak of the first wave, considering the political communication about the large-scale infection of the residents of the Pesti Road Elderly Care Home.⁹

⁸ https://index.hu/belfold/2020/03/16/koronavirus_magyarorszagon_operativ_torzs_teruleti_adatok_nem_eletkor/

⁹ <https://magyarnarancs.hu/belpol/nem-birja-tovabb-pesti-uti-idosotthon-igazgatoja-nyugdijba-megy-130025>

From the data protection perspective, it is particularly worrying that on the designated information site of the government, koronavirus.gov.hu, they uploaded, and still do to this day, certain data (sex, age, underlying disease) about every single individual who died of the infection, with continuous numbering, counted from the date of death of the deceased¹⁰. For lower case numbers, the described disclosure raised data protection concerns¹¹, in one particular case it even generated a potentially sensitive diplomatic situation, as it was published in the media that the Deputy Head of Mission of the British Embassy in Budapest was the tenth victim of COVID-19 in Hungary.¹²

Since the beginning of the pandemic there have been occasional reports about major disease focal points, there has been information provided by the Operational Staff about the cases as well (e.g. by naming the elderly care homes, or in some cases the settlements¹³) however the aspects of the disclosure are unclear. Since the beginning of the pandemic, mayors have complained that they do not get access to the information regarding the infection rate of their settlement, in spite of the fact that during the state of emergency the legislator transferred the exercise of municipal rights to the mayors.¹⁴ Among others, the mayors were eligible to introduce harsher curfew restrictions for certain weekends, compared to the national rules, however they did not possess the information essential for risk assessment.¹⁵ The problem was further escalated by the fact that following the deterioration of the epidemiological situation, the Operational Staff only held online press conferences, where the journalists had to send in their questions in advance, and then they arbitrarily chose which of the questions they would like to answer. There are several media outlets whose questions have never been answered.¹⁶ Owing to the centralised manner of

¹⁰ <https://koronavirus.gov.hu/elhunytak>

¹¹ <https://tasz.hu/cikkek/jogserto-listat-kozolt-az-allam-a-koronavirus-aldozatairol>

¹² https://hvg.hu/itthon/20200325_koronavirus_aldozatok_magyarorszag_brit_nagykovet_helyettes_steven_dick

¹³ https://index.hu/belfold/2020/08/06/koronavirus_magyarorszagon_papa_gocpont/

¹⁴ Act CXXVIII of 2011 on Disaster Protection and Amendments to Certain Related Acts. Section 46 §(4) of the Act: In the state of emergency, the duties and powers of the municipal council, the general assembly and the general assembly of the capital are exercised by the mayor and by the chairman of the county assembly. Within this framework, they may not take a position on the reorganization, termination, supply and service areas of a local government institution, if the service also concerns the settlement.

¹⁵ 148/2020 Regulation regarding the possible municipal measures for the weekend restrictions. (IV. 23.) Government Regulation

¹⁶ <https://tasz.hu/cikkek/gyorskutatas-igy-akadalyozza-az-allam-a-koronavirus-jarvanyrol-tudosito-ujsgirokat>

communication, this meant that it was practically impossible for them to get the information from an official source.

48/2020 (IV.) on the measures to be taken during the declared state of emergency, to prevent pandemics causing mass infection and a threat to the safety of life and property, and to avert the consequences in order to protect the health and the life of Hungarian citizens (III. 19.) Governmental regulations on public procurement

Sequence number of the criteria concerned: 1, 3, 4, 6

One of the first measures of the government in connection with the pandemic was to loosen up the public procurement provisions: the primary aim was to minimize the bureaucratic impediments to procurements for health care and others directly linked to the pandemic. This decree, according to its wording, meant that when it comes to coronavirus related procurements, the member of the government responsible for emergency prevention (the head of the government), and the person appointed by him, in certain cases were eligible to give a discharge in respect of the implementation of public procurement provisions. In particularly urgent cases they could even call the partner to bid directly. This decree was not voided with the termination of the state of emergency, but it was transposed directly into the Health Care Act, thus the decree may be used during the health crisis.

The relaxation of the public procurement provisions may be justified in the event of a global pandemic such as the one we are experiencing, which increases the demand for certain health care products worldwide, but we can not disregard the fact that the primary aim of these rules is to ensure that the procurements are transparent, and that the use of public funds happens in a responsible and cost-effective manner. Coronavirus related procurements hardly comply with these requirements, especially because even the information about the identity of the person eligible to grant exemptions in case of certain procurements was not made publicly available.

After several data requests and the expiration of all legal deadlines, K-Monitor finally found out that it was Péter Szijjártó, Minister of Foreign Affairs and Trade, who made these decisions, but we still do not know that apart from the procurements of the Ministry of Foreign Affairs and Trade, how many other procurements were granted exemption and to

which body these requirements belonged. Regarding the value and the subject matter of the procurements of the Ministry of Foreign Affairs and Trade we still have no information either. This is problematic because there are many contracts, amongst those which were made public, whose economic interest could be questioned. It was revealed, among others, that the Ministry of Foreign Affairs and Trade itself purchased ventilators at unreasonably high prices compared to other national bodies¹⁷ (many experts also contested¹⁸ whether the purchased amount was really necessary). It was also concerned that companies, with connections to prominent businessmen or politicians close to Fidesz, can be profiteering from the exempted procurements¹⁹. Another issue related to the procurement of ventilators is the adequacy of the equipment: media reports that some of the procured devices are not adequate for intensive therapeutic treatment and can only be used in home nursing as a respiratory aid.²⁰

The Minister of Finance later refused to investigate the background of ventilator-procurements, following the notification submitted by representatives of the parliament. He argued that with the termination of the state of emergency, the decree about the relaxation of public procurement provisions was voided too, thus the contracts no longer needed to be monitored by the ministry.²¹

Government Decree 87/2020 (IV. 5.) on the exceptional rules regarding the payment of parking fees, applicable during the state of danger

Sequence number of the criteria concerned: 2, 5, 6.

The government issued a decree to make public parking free of charge throughout the country, referring to the safety measures against the spread of the virus - based on their

¹⁷ <https://g7.hu/kozelet/20200714/az-allami-korhazellato-feleannyiert-vett-kozel-2500-lelegeztetogepet-mint-a-kulugy/>

¹⁸ <https://24.hu/belfold/2020/04/17/koronavirus-lantos-gabriella-lelegeztetogep-korhazi-agy/>

¹⁹ <https://www.valaszonline.hu/2020/09/23/fourcardinal-szabo-laszlo-lelegeztetogepek/>

<https://www.valaszonline.hu/2020/09/04/vereb-balazs-rahoi-zsuzsanna-fourcardinal-lelegeztetogep/>

²⁰ <https://magyarhang.org/belfold/2020/05/12/felresikerult-a-lelegeztetogep-beszerzes-otthoni-hasznalatra-tervezett-legzest-segito-keszulekeket-kaptak-az-intenziv-osztalyok/>

²¹ https://nepszava.hu/3093595_varga-mihaly-elarulta-miert-nem-vizsgalja-ki-szijiartoek-meregdraga-lelegeztetogep-bizniszet

logic, the more people used their cars the less busy public transport would be, therefore the spread of the virus could be slowed down due to a reduction in personal contacts.²²

The decision had an impact on the local councils, because the operators of the cars parked in the public spaces of a town pay parking fees to the local council, and the council has full ownership of these fees. The measure impacted each town in very different ways. In small towns of Hungary, paid parking is an almost unknown concept; however in larger towns and cities (county seats, towns with county ranks, the capital) it makes up a considerable portion of their income. Naturally, parking fees generate the largest amount in the (opposition-led) capital, Budapest. Furthermore, due to the two-tier municipal structure, both the individual districts and the city council receive funds from this. We also need to mention here that the majority of the inner districts where parking fees generate considerable amounts of the income are also opposition-led (districts XIII., VI., VII., VIII., IX., XIV.). The decree concerning parking fees naturally meant the most significant loss of income for larger towns and tourist centres; although due to the lockdown measures, the latter had no active tourism for several weeks, so the parking fees were not the primary reason for their loss of income.

These steps impacted every local council; the reduction of financial leeway can result in a reduced quality of how both obligatory and non-obligatory tasks are carried out, or even omitted, which in turn can lead to subsidiarity and autonomy being harmed.

Government Decree 92/2020. (IV. 6.) on the exceptional rules regarding the 2020 budget of Hungary in connection with the state of danger - the reduction of budgetary support of parties, ad hoc withdrawal of funds from certain Budapest districts, and directing income from motor vehicle tax towards the central budget

Sequence number of the criteria concerned: 2, 4, 5., 6.

Based on the government's decision, parties that receive budgetary support (these are the parties achieved at least 1% at the last parliamentary election) will receive only half of the budgetary funding allocated for 2020, saying that these resources are needed for protection

²² <https://koronavirus.gov.hu/cikkek/orszagos-tisztifoovos-az-ingyenes-parkolas-jarvany-lassitasat-szolgalja>

against the pandemic. It is worth looking at the scale of these amounts: in case of parties that achieved lower support at the 2018 parliamentary elections (Hungarian Two Tail Dog Party, Momentum, Párbeszéd Magyarországért Párt [Dialogue for Hungary]) it is in the order of 10 million, while in case of parties that achieved higher support in 2018 (Democratic Coalition, FIDESZ-Hungarian Civic Union, Jobbik "Movement for a Better Hungary", Christian-Democratic People's Party, LMP - Hungary' Green Party, Hungarian Socialist Party) it is in the order of a 100 millions forints. These amounts seem miniscule in light of the costs of the protective measures against the pandemic and the economic protection measures, but may significantly hinder the parties' democratic decision-making (cf. Fundamental Law of Hungary, article VIII. (3), "Political parties shall participate in the formation and expression of the will of the people.") since these amounts are a considerable part of their budget. We need to mention that the difference in amounts is not the only reason why the withdrawal of funds impacted the parties in different ways: the withdrawals mean a less significant loss for the governing parties. There are several reasons behind this, one of these that we need to highlight is that the political messages of the governing parties is constantly communicated by the public media to the public, but also by the press products belonging to the portfolio of the Central European Press and Media Foundation that is close to the government; furthermore, that the governing parties have several elected figures exercising public authority and receiving fees throughout the country. The effects of the decree were somewhat reduced by the fact that a change in the law made it possible for the parliamentary groups of certain parties to support the parties behind them from their own budget. Thus the decree took the biggest toll on parties without a parliamentary group.

Based on this decree, income from the motor vehicle tax was directed from the local councils towards the central budget, which concerned every town but especially those where the motor vehicle tax was solely an income of the local council (mostly small towns or less populated cities without income from tourism tax and business tax), or because of the large amount of vehicles the income from this type of tax previously provided a considerable part of the town's tax revenue and thus operating expense (and freely usable income). This measure affects the 2021 budget too.

This legislation also gave power to Finance Minister Mihály Varga to redeploy funds in the 2020 budget from practically any government-handled appropriation to the Economic Protection Fund. The Finance Minister exercised his right to do so at the end of April when he simply redeployed 400 and 1.125 million forints from the municipal funding provided by the Ministry of the Interior to Ferencváros (district IX.) and Józsefváros (district VIII.) towards protection against the pandemic. These funds had originally been agreed upon with the governing-party leadership of the districts, but in the 2019 municipal elections

opposition-party candidates won in both. Since a deduction of this scale did not happen to any other allocated funds, it may be logical to assume that this selection happened arbitrarily and with the aim of punishing opposition-led districts. This is made even more likely by the fact that Máté Kocsis, group chairman of Fidesz-KDNP received a mandate from individual constituencies containing certain parts of district VIII. and IX.²³ However, the Ministry of the Interior emphasised that the funds in question were withdrawn only because the concerned district councils had not claimed these amounts before the government decree came into effect.²⁴ Despite that, we can hardly say that the background of this decision and its communication was transparent.

Government Decree 108/2020 (IV. 14.) on the epidemiology-related special tax to be paid by credit institutions aimed to support the Epidemiological Fund in order to execute the Economic Protection Action Plan, and the related Government Decree 92/2020 (IV.6) on the exceptional rules regarding the 2020 budget of Hungary in connection with the state of danger

Sequence number of the criteria concerned: 1, 3, 4, 6.

The government passed the emergency rescue package related to the pandemic in April. In the framework of this they decided to create the Epidemiological Control Fund and the Economic Protection Fund; the first one mainly containing expenses directly related to the pandemic (for example the procurement of healthcare supplies), and the latter one containing expenses related to keeping the economy at a steady level (for example measures aimed at the protection of workplaces or tax relief measures). There is further

²³ https://www.valasztas.hu/oevk-jegyzokonyv?p_p_id=ogyoevkeredmenyadatlap_WAR_nvinvrportlet&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_pos=2&p_p_col_count=3&ogyoevkeredmenyadatlap_WAR_nvinvrportlet_megyeKod=01&ogyoevkeredmenyadatlap_WAR_nvinvrportlet_vllid=244&ogyoevkeredmenyadatlap_WAR_nvinvrportlet_vitlid=556&ogyoevkeredmenyadatlap_WAR_nvinvrportlet_oevkKod=6

²⁴ https://www.parlament.hu/web/guest/aktiv-kepviseloi-nevsor?p_p_id=hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_auth=2YdkryMy&hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fogy_naplo_naplo_fadat%3Fp_ckl%3D41%26p_uln%3D129%26p_felsz%3D113%26p_szoveg%3D%26p_felszig%3D113

income of about 55 billion forints for the Epidemiological Control Fund from the epidemiological tax levied on the finance sector. It is important to highlight that similarly to the "normal" bank tax, the basis of the epidemiological tax is also turnover, which can be reduced by funds provided to spectator-team sports that comply with the Act of Corporation Tax and Capital Return Tax. This can have special significance this year since due to the pandemic (the decrease in demand, and the credit holiday) we can presume that several financial institutions will be loss-making (or nearly loss-making), therefore they won't be obliged to pay corporation tax. Thus, even by providing funds to spectator sports they won't be able to reduce their corporate tax base. This measure is clearly intended to encourage the supporting of spectator sports and to narrow the leeway of the private sector in the area of sponsorship and community involvement. The most important problem with the system of these rebates enabled by the Act of Corporation Tax and Capital Return Tax is that through this, spectator sports receive funds in a non-transparent and unverifiable manner. The intertwining of politics and sport, and the fact that officials of most sports associations are politicians make this kind of support all the more problematic.

Government decree No. 128/2020 (IV. 17.) on putting the operation of economic organisations under the supervision of the Hungarian state within the actions to be made in course of the emergency

Numbering of the concerned requirements: 4, 6.

The Government put Kartonpack Zrt., a company registered in Debrecen producing medicine boxes, under state supervision a little more than one month following the declaration of state of emergency. This provision seems inexplicable from the point of view of the coronavirus, or the measures taken against the pandemic. Analysts pointed out that the government decree may have served a completely different purpose. Namely, about 62.5 percent of the company was owned by the Britton Kft. made infamous in the Kulcsár case. This participation interest should be given to the state via confiscation of property, but the state was so far not able to execute its claim due to the owners' resistance. The supervisory action of the state served the purpose to enable the Hungarian National Asset Management Inc. to give a proposal to the smaller investors of the company at a reasonable price. For this purpose, the complete due diligence of the company was necessary, however, this was only possible after the state's representatives were able to take the necessary positions in the company. Although the case's background is indeed ostentatious, it is cause for great

concern and undermines legal certainty if the government misuses the authorisation provided by the state of emergency and takes actions while referring to the state of emergency that have neither direct nor indirect relevance to the pandemic. The afterlife of the case requires further analysis reflecting the future developments.²⁵

Government decree No. 135/2020 (IV. 17.) on the necessary actions to be taken for the stability of the national economy in relation to the state of emergency

Numbering of the concerned requirements: 2, 4, 5, 6.

The government enabled in a decree that it may designate so called special commercial zones in certain settlements via government decree. This provision was almost certainly rendered - as we can see in relation to the decree immediately following it by its numbering - in order to designate the Samsung factory and its surrounding within the city limits of Göd as such an area on the same day.

Government Decree No. 136/2020 (IV. 17.) on the designation of a special commercial zone within the administrative area of Göd

Numbering of the concerned requirements: 2, 4, 5, 6.

The government designated via a decree a significant part of Göd city's area as a special commercial zone (exercising the authority provided by the government decree resolved on the same day). Furthermore, it redirected about one-third of its income, namely the income of business tax to the Municipality of Pest County. The reasoning for the above was the mitigation of the negative economic results caused by the COVID-19 pandemic, as well as creating workplaces. Special emphasis was given to the action by the fact that a coalition crisis arose in the city government in the days prior to the decree²⁶.

²⁵ <https://telex.hu/gazdasag/2020/10/02/pont-az-allam-trollkodja-szet-a-tozsdei-szabalyokat>

²⁶ https://www.valasztas.hu/oevk-jegyzokonyv?p_p_id=ogyoevkeredmenyadatlap_WAR_nvinvrportlet_&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_pos=2&p_p_col_count=3&ogyoevkeredmenyadatlap_WAR_nvinvrportlet_megyeKod=01&ogyoevkeredmenyadatlap_WAR_nvinvrportlet_vlId=244&ogyoevkeredmenyadatlap_WAR_nvinvrportlet_vlId=556&ogyoevkeredmenyadatlap_WAR_nvinvrportlet_oevkKod=6

It is characteristic of the situation that even part of the county newspapers owned by the government-friendly KESMA reported on the political crisis, therefore many readers outside of Pest county were able to learn about this inner-political development having fundamentally local significance²⁷. The political motivation of rendering this decree is supported by the declaration of Gergely Gulyás minister leading the Prime Ministership made on 23 April 2020, in which he shared his opinion that a conflict arose between the opposition mayor and the opposition vice-mayor in Göd, and Csaba Balogh mayor argued even in his election campaign against the expansion of the Samsung factory. By this he reflected that the government sees no guarantee that the investment will be realised and, therefore, it is necessary to resolve by decree. The fact that until now not a single special commercial zone has been designated apart from Göd also supports the political motivation for the action, although many industrial parks and industrial plants of great significance can be found throughout the country.

The results of the action on the settlement are plainly and exclusively negative, and the rendering of the government decree shows a strong intervention into the self-government of the municipality without precedent. The local citizens or the leaders of the settlement had only very limited options to raise objections against the detrimental effects suffered by the settlement due to the state of emergency. (They had no option to organise a demonstration due to the general prohibition of assemblies; and the whole of the representative body was not able to exercise political tools due to the fact that its operation was suspended and all of its functions were exercised by the mayor.) With respect to the circumstances it can also be stated that the action caused discrimination, since no other government decisions concerning the same matter were made in relation to settlements in similar positions. It also reflects the non-transparency of the decision-making that the government decree includes no substantial, specific reasoning, which could clarify why the action was necessary at that particular time.

²⁷ <https://www.baon.hu/orszag-vilag/folytatodik-a-dk-momentum-haboru-2910473/>

Government decree No. 179/2020 (V. 4.) on differing from certain provisions on data protection and data request during the state of emergency

Numbering of the concerned requirements: 4, 6.

It hinders the operational transparency of, as well as the control over, bodies with public service missions that the government also modified the process on requesting data of common interest: The deadline for reply set by the act No. CXII of 2011 on the right of informational self-determination and on freedom of information (15 days after receiving the request that can be prolonged in justifiable cases by a further 15 days) was raised by threefold, and the prolonged deadline remained once the act on the interim provisions in relation to the termination of the state of emergency entered into effect.

This provision had no relevant reason caused by the pandemic, the administrative workers fulfilled their duties with unchanged numbers. It is especially unreasonable that the prolonged deadlines remained in effect following the termination of the state of emergency, since this causes an enduring breach of freedom of information. The limitation of this fundamental right might entail remarkably sensitive consequences in a period, when the transparency of the state and the effective information provided to the citizens may significantly assist the solution of the crisis as soon as possible. The function of democratic control gains emphasis from another point of view, as well: although there is more possibility to limit fundamental rights in a state of emergency - for justified reasons - it is therefore necessary to enforce aspects of transparent decision-making, and to ensure citizens exercise democratic control over public authorities and their bodies.

Taking into account that the Operative Staff consistently did not reply to questions raised by numerous media, and therefore the journalists were able to meet their obligation to inform the public only with significant limitations, the role of data requesting could have gained increased significance. But the deadline for a reply that could even stretch to 90 days significantly undermined the actuality of the answers and their usability in news reports. The problem was made more severe by the fact that the prolonged deadlines to comply with data requests remained in effect within certain limitations also in the interim provisions following the termination of the state of emergency.²⁸

²⁸§§ 265-266 of the Act LVIII of 2020 on the temporary regulations related to the termination of the state of emergency and the state of pandemic preparedness

Act No. XXIX of 2020 on the development, implementation and financing of the Hungarian part of the investment regarding the Budapest-Belgrade railway line's renovation

Numbering of the concerned requirements: 1, 3, 4.

The Budapest-Belgrade railway line will be the most expensive railway line development of all time, its aggregated cost may even reach thousand billions of Hungarian Forints. The Hungarian state will pay about 15 percent of the costs, and finance 85 percent of it from a Chinese state loan. The government signed the credit loan agreement in this regard in late April. The investment raised myriad questions: it was debated, when would the railway development pay off according to the plans; what advantages would it provide to the country; and even what its estimated costs will be. It is easily imaginable that we will never know the answers to the above questions, since the parliament accepted back in May with two-third pro-government majority the act on the development of the Budapest-Belgrade railway line, which on one hand qualifies the development as a priority investment (and consequently, simpler rules on procurement procedure apply), and on the other hand provides basically general authorisation to the minister of foreign trade and foreign relations to classify all documents in relation to the investment for ten years.²⁹We at least know since last year that the company of Lőrinc Mészáros will again have a significant role in the realisation.³⁰

Anomalies regarding the powers of municipal council and general assembly exercised by the mayors

Numbering of the concerned requirements: 4, 5, 6.

Act CXXVIII of 2011 on Disaster Protection and Amendments to Certain Related Acts.

Section 46 §(4) of the Act: In the state of emergency, the duties and powers of the municipal council, the general assembly and the general assembly of the capital are exercised by the mayor and by the chairman of the county assembly. Within this framework, they may not take a position on the reorganization, termination, supply and service areas of a local government institution, if the service also concerns the settlement.

²⁹ <https://24.hu/fn/gazdasag/2020/05/26/eldugja-a-kormany-mennyit-koltenek-a-budapest-belgrad-vasutra-koltsegvetes-2021-meszaros-lorinc-varga-mihaly-orban-viktor/>

³⁰ https://index.hu/gazdasag/2019/06/12/meszaros_cege_opus_megkototte_590_milliard_szerzodest_a_budapest-belgrad-vasutvonalra/

Legal supervision over local governments (and so during state of emergency, mayors exercising the powers of municipal council) is exercised by the capital and regional government offices. Based on the experience of HCLU, government offices did not act effectively against the mayors who exercised their powers abusively, however, people notified them regarding malicious measures that were legal in terms of textual-formal interpretation of legislation.³¹ Beside the advantage of single decision-making (speed) this mechanism involves risks as well, so it would be absolutely necessary to get them under effective legal control, which did not happen according to experience.

These breaches are suitable to undermine confidence instilled in the transparent operation of the state, because the reason for the refusal of the investigation was the same for each case known by HCLU, so it is unclear what kind of measurement would have been applied to determine the infringement by the government office. 11 government offices (of the 19) did not reprove the mayors because of their decisions in a single case as yet.

It caused a problem especially for the smaller municipalities that the mayors' decisions made by their powers of general assembly were not public immediately, because these were not uploaded on the web page of the municipalities, and so caused safety of rights concerns.

However, it was a governmental attempt to diminish governance further when a law was drafted (T/9934. nr. draft law, paragraph 36)³² that the mayors are allowed to make decisions only with the approval of the county (capital) defence committee during special legal order. At first glance, the measure could be a brake on arbitrary decisions, but looking at it more thoroughly we see a political motivation behind its goal, as with this the municipal decision taken by a mayor (possibly a not pro-government mayor) would only come into effect with the approval of a non-elected body that is however constituent of government-controlled officials. Moreover, the real purpose of individual decision-making by mayors would have been greatly undermined by this regulation: the intention of the legislator to provide the possibility of taking decisions as soon as possible in order to deal with the crisis situation, slowing it down by including an actor who, moreover, is not responsible for the democracy of decision-making, runs counter to the original idea. The proposal was eventually withdrawn by the petitioner, apparently not in spite of the fact that the measure would also have placed a significant burden on pro-government mayors.

³¹ <https://tasz.hu/cikkek/nem-fekezték-meg-a-kormányhivatalok-a-vezelyhelyzettel-visszaelo-polgarmestereket>

³² https://www.parlament.hu/irom41/09934/09934.pdf?fbclid=IwAR0A0Xh4gwRHLz-85W1fcke5WZCCmlwErf8ypJ0TwED05saey_aSGeekCEs

The adoption of bill T / 9934.

Numbering of the concerned requirements: 1, 2, 3, 4, 5.

On March 31, 2020, during the night hours, Deputy Prime Minister Dr. Zsolt Semjén submitted a proposal for an omnibus law on a wide range of topics, entitled “Amendments to certain administrative laws and free property transfer”. The most important provision of this from the point of view of our topic is that the proposal adopted since then granted two properties to the Közép- és Kelet-európai Történelem és Társadalom Kutatásáért Közalapítvány in Budapest, XII. district. The purpose of the proposal was to facilitate the performance of the Public Foundation's public tasks related to the protection of scientific research, public cultural, educational and cultural property.

The Public Foundation was released from fulfilling its obligation under the asset management contract concluded between the legal predecessor of Magyar Nemzeti Vagyonkezelő Zrt. In addition, the transfer of assets did not give rise to any obligation on the part of the parties to reimburse each other.

The measure can be considered abusive, especially in the light of the fact that everything in the government's communication was dominated by the protection against the coronavirus epidemic, which has become known to the public as the Authorization Act (partly by reducing the role of the National Assembly, but by no means suspending its operation) and the law increasing it gave the impression to many that only the measures of the government alone should be monitored, the role of the National Assembly became secondary. At the same time, it should be noted that the measure would have significantly exceeded the scope of the emergency decree-making power interpreted by the government in several other cases, therefore the legislative procedure of the Parliament was appropriate in the public law sense. Not ruling out the possibility that a decision on the transfer of property had already been made long before the bill was submitted, it is clear that the measure did not have any epidemiological or economic protection role, it was intended solely to strengthen the Public Foundation, led by Mária Schmidt, who is known to have a close relationship with the government, and is therefore a measure of recourse, both in terms of its timing and its content.

The same bill was amended by Ngvtv. classifying the investments in the City Park as an investment of special public interest and ruling out the application of the prohibition on alterations in relation to the properties in question and ruling that the prohibition on alterations laid down in the municipal decree concerning the area did not apply.

The purpose of this provision is obviously to guarantee the continuity and completion of the Liget Project, contrary to the intentions of the Metropolitan Municipality, and the government's earlier statement that no investments will be made in Városliget with which the people of Budapest do not agree.

Law XXVI of 2020 on the support of the talent development program of the Mathias Corvinus Collegium and the educational activities of the Maecenas Universitatis Corvini Foundation; and on the amendment of certain laws on administrative matters, as well as on the free transfer of property in XXX of 2020. related provisions of the Act

Numbering of the concerned requirements: 1, 4.

Not related to the emergency, the parliament passed several pieces of legislation that provided significant assets free of charge to foundations close to the government. One of these is the Tihanyi Foundation, which operates the Mathias Corvinus Collegium, which received shares worth about HUF 290 billion and two valuable properties in Gellert Hill in order to expand the college - and administrative authority cases related to the construction works of the latter were declared to be a matter of high importance from the point of view of national economy. They last received an extra HUF 36 billion at the end of August, which was reallocated directly to them from the Economic Protection Fund.³³

The Matthias Corvinus Collegium, an elite vocational college and management training foundation that can be linked to the government through the founder, as well as the foundation that maintains it, also received extraordinary benefits in addition to valuable real estate in Buda, 10% stake in MOL and Gedeon Richter 10³⁴ - as a reminder, this is exactly what Corvinus University, with nearly 18,000 students, received when the model change was introduced.

³³ <https://mfor.hu/cikkek/makro/36-milliardot-ad-a-kormany-egy-alapitvanynak-a-gazdasagvedelmi-alapbol.html>

³⁴ <https://mfor.hu/cikkek/befektetes/ujabb-alapitvany-kap-10-10-szazaleknyi-mol-es-richter-reszvenyt.html>

Following the emergency, the Government established 370/2020 (VII. 30.) on investment of overriding public interest in connection with the construction works of the talent development center of the Mathias Corvinus Collegium and related matters of national economic importance, which provided additional subsidies to the institution.

1099/2020 on the measures necessary for the implementation of certain tourism developments. (III. 12.) Government Resolution

Numbering of the concerned requirements: 1, 2, 3, 4, 6.

The coronavirus epidemic has severely affected the entire hospitality-tourism industry. The government has provided the sector with several resources, such as the prohibition of terminating rental contracts for places of business, the suspension of tourism tax, and the increase of the framework amount of the SZÉP card.

At the same time, the Kiszaludy Program, begun in 2017, has continued to progress at top speed and new support for the renovation of accommodation has become available. However, the distribution of the resources is again worrisome: even though the latter structure of the program (support of private accommodation) has been communicated as though it were an integral part of the program aiming to mitigate the economic crisis caused by the COVID-19 pandemic, and the funding for tourism has been increased (for the next 10 years), there is still the question of why the structure was not expanded to the renovation of accommodation in Budapest when these were the most impacted by the pandemic.

However, the especially contentious points of the Kiszaludy Program do not impact the above-mentioned structure for the development of private and other accommodation, issued in May by which approximately 14000 applicants were granted a total of 40 billion forints, but instead, the tender titled "The development of existing large-capacity hotels and the establishment of new hotels" issued in December of last year. The fact that the tender issued a few days before Christmas of 2019 was already suspended on January 7 citing that "the funding requests of the received applications exceeded the announced framework account several times" is suspicious in and of itself. One might assume that the tender was leaked as it is nearly impossible to draft in a little over two weeks. However, when asked by member of parliament Ágnes Vadai, Péter Polt stated that the prosecutor's office may not examine the matter to determine whether there were any irregularities because the assessment of grants does not fall under the scope of the act on administrative procedure.

The announced framework sum was originally 20 billion forints, but in May, when the results of the tender were announced, we found out that 83,5 billion forints were handed out. This is supported by the fact that companies established only a few days prior to the announcement of the tender could apply as operators and be awarded funding. Another question is that the mentioned Adventor Kft. applied as the manager of hotels in the scope of interest of the renowned billionaire László Szíjj and the manager of the billionaire's funds bought into the Kft just a few days before the results of the tender were announced. (Of the projects of the many renowned billionaires among the winners several only existed on paper at the time or were operating at a deficit, eg.: the Tihany Castle Hotel project associated with Zsolt Hernádi, István Garancsi, and Sándor Csányi, but the over 17 billion forints of support awarded to Hunguest Hotels, which are within Lőrinc Mészáros's scope of interest, is still notable.)

Apart from the announced Kisfaludy Tenders, the National Tourism Development Agency decides on ad hoc support, for example, according to reports, another one of László Szíjj's luxury hotel construction projects was afforded support this way. Information about such funding is practically impossible to come by or at least very difficult.

Accepting gifts of large value

Numbering of the concerned requirements: 5.

In August of 2020, another case confirmed that the Hungarian political elite is not open to adherence to basic ethical requirements. In the days when the Belorussian crisis was coming to a head, investigative journalists discovered that Péter Szijjártó, Minister of Foreign Affairs and Trade, was spending his holiday on a luxury yacht in the Adriatic. The owner of the yacht was László Szíjj: the billionaire businessman whose scope of interest includes Duna Aszfalt, one of the most successful Hungarian construction companies as regards public procurement, and the company had won several billion forints in construction tenders over recent years. According to his asset and income statement, the minister of foreign affairs could hardly have had the funds for a luxury holiday, and at the same time it is highly problematic that a high-ranking politician is accepting a gift of obligatory value and no less from an economic roleplayer whose income stems largely from doing business with the Hungarian State. The minister was unwilling to answer questions regarding the details, and Gergely Gulyás, Minister of the Prime Minister's Office, called the travel a "family vacation" and as such "a private matter." In accordance with this, chief prosecutor Péter Polt said that the matter has no direct criminal implications and the committee on the statement of assets

and privileges is not willing to investigate the matter. The latter decision again points to the legal deficiencies of the asset declaration system.

Maladministration related to the assessment of the National Scientific Research Funding Program (OTKA) tenders

Numbering of the concerned requirements: 1, 3, 5, 6.

The fact that the National Ministry of Innovation and Technology modified the hierarchy established by the professional panel resulting in funding received by applicants not recommended by the panel, among them applicant researchers who are openly in support of and profit from the scientific policy of the Orban-government came to light in August of 2020 when the results of the OTKA tenders were announced. The president of the Hungarian Academy of Sciences also objected to the procedure as an impermissible interference with the freedom of the scientific community. However, minister László Palkovics defended the actions by saying the hierarchy was not modified arbitrarily, instead an algorithm was implemented that emphasizes certain indices of scientific metrics differently than before.