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Challenges of COVID-



📅 7 August 2020 👤 by Ramona Coman



Hungarian Parliament session (Budapest).

Pandemics put peoples' lives at risk. Emergency powers are special regimes developed to face exceptional situations. If pandemics are dangerous, emergency situations are not without risk either as power is centralized, rights are limited, and many exceptions introduced.

At the beginning of the global COVID-19 pandemic, nation states have acted as primary actors within the European Union, insofar as health is a supporting competence in

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which EU institutions can only support member states providing recommendations on a common course of action (Art. 6 TFEU). All EU member states have adopted a wide range of decisions to stop the spread of the virus by limiting internal and international travels, suspending economic activity, closing schools and universities, confining persons, **drastically limiting individual freedom of movement and assembly**. In an interdependent European Union, what deserves attention is that these measures vary from one country to the other as each member state has its own definition of the circumstances that might give rise to a state of emergency, the procedures to be followed, the limits on the emergency powers or the rights that can be suspended.

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How to avoid abuses: duration, scope and mechanisms of control

Emergency regimes threaten liberal democracy as power is concentrated and rights are restricted or derogated (Lazar 2009: 52). In front of wars, natural disasters, pandemics and other exceptional circumstances, the emotional effect and the high degree of uncertainty lead citizens to support extensive powers in the hands of governments.

To avoid abuses, standards and principles have been defined. A state of emergency is by definition a state which must be exceptional and temporary, meaning that **emergency rule must be time-limited. As stated by the Venice Commission**, governments should not be able to adopt rules that weaken the position of other independent State institutions, change their composition or principles of functioning. Emergency regimes require an appropriate balance of power to allow governments to deal with exceptional circumstances and to avoid abuses of power. To do so, judicial review and parliamentary control are key. On the one hand, legislative control over the acts and actions of emergency rule authorities is important and **implies a continuity of parliamentary life during the period of emergency**. On the other hand, emergency measures should be based on the rule of law and governmental actions should be subject to review by independent courts (Venice Commission).

State of emergency measures under scrutiny when domestic mechanisms of control are (already) weakened

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Une autre publication cette semaine méthodologique dans @PolEur sur notre expérience de l'usage de la distance dans nos thèses corrélatives à l'anti-terrorisme et aux évaluations

Over the last ten years, the Fidesz party in Hungary has adopted a wide range of measures transforming the nature of the political regime through the revision of the Constitution, changes in the legal system limiting the independence of the judiciary, the independence of the media sector, the electoral law, new acts on labor rights. Viktor Orbán could alter the entire constitutional system without institutional constraints. This process of transformation has been conceptualized in different ways as “democratic deconsolidation”, “de-democratization” and even “de-Europeanization” to point out the erosion of democratic rights, the centralisation of power/executive centralisation, the minimal representative democracy and a majoritarian conception of the national will, the limits on independent institutions, the transformation of the rule of law through executive interventions as well as the reconfiguration of media ownership through state interventions. One by one, over the last decade, each democratic mechanism of control has been weakened, while executive power has been reinforced.

The COVID-19 pandemic adds a new layer to power centralization. In March 2020, **the Hungarian government introduced a special legal order and a state of danger to prevent the spread of the coronavirus infection.** On 30 March, the National Parliamentary Assembly, in which the ruling party Fidesz wields a strong majority, adopted the Coronavirus Protection Act, vesting the government with open-ended emergency powers to prevent and mitigate the impact of the COVID-19 pandemic in Hungary.

The lack of a time limit for Hungary’s state of danger has given rise to vivid discussions and criticism. **For the European Parliament (EP), the decisions of the Hungarian government to authorise the Government to rule by decree without time limit are incompatible with European values.** 80 Members of the EP and more than 50 civil society rights groups sent a letter to the President of the Commission and of the European Council to draw attention that the COVID-19 pandemic **“must not serve as a smokescreen for anti-democratic activities and the stifling of active civil society”.** In April, commissioner Věra Jurová declared that – at that moment – there was no reason to start proceedings against Hungary. The Council remained silent, but on 1 April, Sweden, Belgium, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal and Spain **adopted a statement expressing “concerns about the risk of violations of the principles of rule of law, democracy and fundamental rights arising from the adoption of certain emergency measures”.** After its publication, Bulgaria, Romania and Cyprus also joined the statement. Amnesty

International, International Federation for Human Rights (FIDH), Human Rights Watch, International Commission of Jurists, Open Society, European Policy Institute and Reporters Without Borders (RSF) expressed concerns over how the Government of Hungary is using this challenging situation as an “opportunity to further restrict human rights and erode the rule of law”.

Beyond COVID19: narratives and legitimization strategies for authoritarian politics

Judit Varga, Hungarian Justice Minister, released a statement published by Politico arguing that the claims about ‘power grab in Hungary’ are “false” and that they “are spreading as quickly as the coronavirus”. In an opinion letter published by Euronews, Zoltán Kovács, the Hungarian State Secretary for International Communication, affirmed that most of this criticism is “misinformed”, “plain false” and “biased”. Prime Minister Orbán himself contended that “at any given moment, parliament must be in a position to take back the right of decision from the government”. After increased criticism, at the end of May, the Hungarian government adopted the *Bill on Terminating the State of Danger*. Nonetheless, the Hungarian Helsinki Committee, Hungarian Civil Liberties Union and Amnesty International Hungary argued that this Bill is “nothing but an optical illusion”, as it would “allow the government to again rule by decree for an indefinite period of time, this time without even the minimal constitutional safeguards”. On 16 June, the Hungarian Parliament unanimously called upon the government to terminate the state of danger, but again opposition parties and rights organisations criticized a separate bill – approved the same day by the legislature – which gives the government the right to declare a “public health emergency” upon the recommendation of Hungary’s chief medical officer. As reported by The NYT, The Hungarian Civil Liberties Union, the Hungarian Helsinki Committee and Amnesty International Hungary declared that this will allow the government to again rule by decree for an indefinite period “without even the minimal constitutional safeguards”.

Domestic governmental actors seek to legitimize decisions through a narrative which consists in the rejection of liberal democracy (Buzogány, 2017). The authority of the EU is contested in the name of sovereignty and the action of International Organizations is not only contested but also systematically discredited. European values are invoked while spinning them around so that they eventually convey a message that is the opposite of their original meaning (Coman and Leconte, 2019: 867). Said values depart from a

pluralistic, liberal, secular understanding of European identity and therefore strongly differ in meaning from the ones enshrined in the Treaty on European Union. The rejection of multiculturalism is part of this narrative, which is diffused through media channels under governmental control, leaving no space for democratic debate and for a meaningful public discourse, which is vital for democracy to be sustained.

The Hungarian government puts forward the argument of legality, as most of the legislation is passed in accordance with Hungary's Fundamental Law. But the principle of legality can be distorted. **As Levitsky and Ziblatt argued (2018: 16)**, in different parts of the world many governmental efforts to subvert democracy are legal, in the sense that they are approved by the legislature or accepted by the courts. Authoritarian practices take different forms, including constitutional and legal mechanisms that replace democratic debate and participation, substituted by rituals of national consultations and the monopolization of the public space.

In COVID-19 times, how to keep democracy vigorous is even more challenging to avoid the violation of core values and principles and their reduction to mere empty words.

Further readings:

- Buzogány, Aron (2017) Illiberal democracy in Hungary: authoritarian diffusion or domestic causation?, *Democratization*, 24:7, 1307-1325.
- Coman, Ramona & Cécile Leconte (2019) Contesting EU authority in the name of European identity: the new clothes of the sovereignty discourse in Central Europe, *Journal of European Integration*, 41:7, 855-870.

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