Ferenc Petruska: Defence and security regulation reform in Hungary

FERENC PETRUSKA

DEFENCE AND SECURITY REGULATION REFORM IN HUNGARY

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DEFENCE AND SECURITY REGULATION REFORM IN HUNGARY

edited by:

Dr. Ferenc Petruska

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The present English-language book is an expanded and revised edition of the Hungarian book titled *A védelmi és biztonsági szabályozás magyarországi reformja*, edited by Dr. Pál Kádár and published in 2023. This edition includes list of keywords and abbreviations, updates to reflect changes in relevant acts and regulations since the original publication.

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"Nemzetközi minták vizsgálata az összehangolt válságkezelésre, az arra való felkészülésre és a különleges jogrendi szabályozására" [Examination of International Models for Coordinated Crisis Management, Preparation, and Special Legal Order Regulation], "A felfegyverzett drónok alkalmazásának egyes nemzetközi jogi kérdései" [Certain International Legal Issues of the Use of Armed Drones], "Önvédelem versus terrorizmus: Az erőszak tilalma és az önvédelem joga a nemzetközi jogban, különös tekintettel az Iszlám Állam elleni nemzetközi fellépés lehetőségeire" [Self-Defence versus Terrorism: The Use of Violence and the Right of Self-Defence in International Law, with Special Regard to the Possibilities of International Action against the Islamic State].

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Administration], "Különleges jogrend 2020-2023" [Special Legal Order 2020-2023].

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"The security challenges of the 21st century cannot be addressed with sufficient efficacy by employing the regulatory framework devised for the threat matrix characteristic of the 20th century. The evolving landscape demands a divergent response and preparation, which must be primarily established at the regulatory level. This is the raison d'être for the defence and security regulatory reform initiated in Hungary in 2020. This reform adopts a whole-of-government approach, taking into account the multifaceted nature of challenges, and facilitates a substantially more flexible response in the interest of defence, whilst simultaneously ensuring the preservation of the rule of law guarantees."

Brigadier General Dr. Pál Kádár, PhD

Defence Administration Office

director general

Introduction

At the start of 21st century, new challenges require innovative crisis management and governance strategies. In today's complex world, it is evident that outdated methods are inadequate for protecting citizens and managing state affairs effectively.

The various dangers we encounter currently such as climate change, overpopulation, food and energy crises, illegal mass migration, international terrorism, pandemics and cybersecurity risks, have significantly altered our perception of national security. The conflict between Russia and Ukraine highlight the unstable geopolitical

environment we are part of. These issue call for a fundamental change in how countries manage crisis and implement legal regulations.

In 2019, Hungary began to make significant efforts to update its defence and security regulations. A specialized team were assigned to assess crisis management methods both domestic and international to suggest an updated regulatory framework that can effectively tackle modern-day challenges. This broad reform strives to strengthen the country's ability to respond to crises and promote a unified approach to involve all sectors of government and society.

The old idea that military police and firefighters take care of everything has been surpassed. Today's defence systems should involve the whole of the government, society and international cooperation mechanisms in their construction and operation. That change mirrors the intricate interlinked nature of modern threats and underscore necessity for a comprehensive approach to national security.

Our investigation shows that Hungary's old regulatory structure does not have the necessary versatility and scope to effectively handle contemporary crises. The available legal tools for action are restricted with several regulations being outdated and occasionally obstructing the use of modern technological resources or causing delays which makes timely intervention unfeasible.

The analysis reveals that crisis management frequently necessitates reliance on executive authority to promptly address crises and mitigate potential repercussions. Hungary's former constitution did not grant the government full authorization to enact measures in four of six exceptional legal order situations.

The reform process in Hungary has resulted in notable changes to the country's constitutional framework and the implementation of new legal tools. These adjustments are aimed at enhancing the authority of the executive branch in responding to crises, all while upholding core principles of necessity, proportionality and adherence to the rule of law. This balance is achieved through temporary special measures and proper

protocols that engage both the National Assembly and the Constitutional Court.

During our research, it was discovered that Hungary mainly focused on individual sectors when managing crises in the past. That strategy often does not consider the intricate connections between various aspects of modern crises. The COVID-19 pandemic has clearly shown that responding to a health crisis effectively involves actions that go beyond just healthcare requiring a unified and collaborative effort across different government agencies.

The book provides a detailed analysis of restructuring Hungary's defence and security regulation, including global parallels and potential effects on governance and society. Understanding these significant transformations helps us prepare for effective crisis management vital for a country's survival in today's tumultuous environment.

The writers of this book have a unique chance to closely witness the legislative process of defence and security reform. Their personal interests and professional roles enable them to offer suggestions and critical feedback for preparing and implementing regulations. Consequently we aim to give readers an in-depth look at key elements and goals of this reform.

When delving into this book, we investigate Hungary's defence regulation's origins, review global strategies for crisis management and unique legal protocols, and also meticulously scrutinize the fundamental components of the updated regulatory structure. Our examination encompasses aspects like defence and security responsibilities, planning mechanisms, readiness and activation of national resources for defence and security objectives, domestic resilience, overseeing provisions and the revised special legal system.

In the current era, it is clear we face various threats and challenges. We must acknowledge many resources once reserved for extreme circumstances are now essential in our daily routine. Effective crisis management hinges on readiness. When not just defence and law

enforcement entities but also all levels of government and society are equipped to tackle crises, the nation can establish a form of stability or robustness, this readiness will safeguard public safety and uphold governmental operation — ultimately securing our country's existence.

This book is designed to help readers get ready for the common task that impacts all of us. By comprehending and adopting these innovative methods for defence and security, we can copoerate to establish a stronger and safer future for Hungary.

Budapest, November 2024

Dr. Ferenc Petruska (PhD)

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Head of the Department of Defence Law
and Administration

editor of the book

I.
Examining international models for coordinated crisis management, preparedness and special legal order

1. Introduction

The events of the past decade or more (including the emergence of the Islamic State in the wake of the Arab Winter, the wave of terrorism in Europe, the Russo-Ukrainian conflict and war in 2015, hybrid conflicts, the security risks of technological advance, the pandemic caused by Covid19)[1] have made it clear that the security environment underpinning existing defence law has undergone a major transformation, which must be followed by a transformation of the rules themselves. It has thus become necessary to reform the regulation. In the present case, we cannot speak of anything other than a regulatory reform of the armed defence sector[2] since the events outlined above call for a general overhaul of the body of rules in the area under consideration, as earlier legal institutions were still responding to the challenges of the last century, and thus in most cases have barely moved beyond their 19th-century roots.

[95] See PONGRÁCZ, Alex, State Failure and State Building, or Conceptual Interpretations of a Real Challenge and the State Aspects of Military Management, In: FARKAS, Ádám (ed.) The Military Defence of the State in the Light of New Security Challenges, Budapest, National University of Public Service, 2019, pp.19-28; BARTKÓ, Róbert – FARKAS, Ádám, In: FARKAS, Ádám – VÉGH, Károly (eds.): A new type of warfare in the second decade of the 21st century and beyond. P. Phil.; SPITZER, Jenő: Institutional and legal challenges, Budapest, Zrínyi Kiadó, 2020, pp. 26-45; HAUTZINGER, Zoltán: In: Nagy, 2018, pp. 265-280; BARTKÓ, Róbert. FARKAS, Ádám – RESPERGER, István: Institutional and Legal Challenges, Budapest, Zrínyi Kiadó, 2020, pp. 132-149; SCHMITT, Michael N.: Defence Constitutionalism in the Field of New Types of Security Challenges, Budapest, Hungarian Military Law and Warfare Society, 2018, pp. 147-169; KELEMEN, Roland – FARKAS, Ádám: Hungarian Yearbook of International Law and European Law (2019), Den Haag, Eleven International Publishing, 2020, pp. 203-226; FARKAS, Ádám In: PETRUSKA, Ferenc – TILL, Péter Szabolcs – BALOGH, András József: In KOLTAY, András – TÖRÖK, Bernát (eds.): An epidemic-stricken society, Budapest, Ludovika University Press, 2021, pp. 87-109.

[2] FARKAS, Ádám: The Basics of the Armed Defence of the State, Budapest, Military National Security Service, 2019.

In the case of such a reform, it seems obvious to look at how others do it, and how others regulate it. In other words, the tool of legal comparison should be used to examine the areas that need to be reformed. In essence, this paper does no more than look at the rule of law framework for crisis resolution, which is at the core of the legal regime of defence. In doing so, the body of rules of states with different legal, social and cultural traditions will be examined within the framework of the study. Accordingly, rather than getting bogged down in a sea of European rules - of course, the solutions of a number of states belonging to this area will be explored - the solutions of the Anglo-Saxon states of the Euro-Atlantic area will be examined, as well as the regulatory wellsprings of a few Asian states operating within a democratic (abb) framework.

The aim of this report is to identify regulatory models, framework regulatory solutions and legal instruments in the field of defence law that can serve as a model for fine-tuning domestic legislation.[3]

2. Special legal order of the Visegrad countries

The analysis should start with the regulation of states where the historical and cultural factors shaping social totalitarianism are similar, and thus, the regulation has been shaped by similar geopolitical circumstances. The aim of this chapter is to present the framework and legislative solutions for specific legal order of the Visegrad States.

2.1. Special legal cases covered

The constitutions and constitutional laws of the Visegrad countries define the situations in which a special legal order may be imposed. The

[3] Among the previous research results, it is worth highlighting the study of the relationship between special legal order and the COVID-19 pandemic: NAGY, Zoltán – HORVÁTH, Attila (eds.): The special legal order and national regulatory models, Budapest, Mádl Ferenc Institute, 2021: Between Szkülla and Kharübdis - Studies on the theoretical and pragmatic issues of the special legal order and its international solutions, Budapest, Hungarian Military Law and Military Law Society, 2020.

legislation basically follows the classic division according to the direction of attack, sometimes supplemented by a more neutral category of cases designed to combat health and environmental disasters. Accordingly, the Czech legal order distinguishes between states of emergency, states threatening the state and states of war.[4] The Polish Constitution also distinguishes between three types of situations: state of war, state of emergency and state of danger.[5] The Slovak legislation recognises four situations: war, state of war, state of emergency and state of danger.[6] These are briefly reviewed below.

2.1.1. Responses to an external attack, i.e. the emergence and regulation of a state of war

In terms of definition, all constitutions except the Slovak Constitution contain a definition of the special legal order of a state of war, which is regulated by a constitutional level law. According to the Act on State Security, the security of the Slovak State is achieved if its constitutional values are preserved, its sovereignty and territorial integrity are not violated, and the democratic order and fundamental freedoms are not infringed. In their study, Lívia Trellová and Boris Balog emphasise that special legal order is an ultima ratio instrument in the Slovak constitutional structure, too, and in that context, they state that the democratic order cannot be in conflict with security, and that it is an intrinsic part of the security of the state.[7]

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[4] HOJNYÁK, Dávid - SZINEK CSÜTÖRTÖKI, Hajnalka: Constitutional and statutory regulation of the special legal order in the Czech Republic. In: NAGY, Zoltán– HORVÁTH, Attila (eds.): A különleges jogrend és nemzeti szabályozási modelljei, Budapest, Mádl Ferenc Institute, 2021, p. 218.

[5] NÉMETH, Zoltán: The Special Rules of Law in Poland. In: NAGY, Zoltán – HORVÁTH, Attila (eds.): A különleges Rechtsordnung és nemzeti Regelnmodelljei. Budapest, Mádl Ferenc Institute, 2021, p. 358.

[6] SZINEK, János - SZINEK CSÜTÖRTÖKI, Hajnalka: Constitutional and statutory regulation of special legal order cases in Slovakia. In: NAGY, Zoltán – HORVÁTH, Attila (eds.): A különleges jogrend és nemzeti szabályozási modelljei. Budapest, Mádl Ferenc Institute, 2021, pp. 530-531.

[7] BALOG, Lívia Trellová-Boris: The Material Core of the Slovak Constitution and its Perspectives, Balkan Social Review, 2022/19, p. 150.

The Slovak Constitution only contains the power to create constitutional laws on war, martial law, and states of emergency.[8] It is worth briefly mentioning, however, that the Slovak legislature decides on the declaration of war, the use of armed forces outside the territory of the Slovak State and the presence of foreign forces in the territory of the State.[9] For a period not exceeding 60 days, the latter may also be decided by the Government.[10] The President of the Republic may order the mobilisation of armed forces and decide on the question of war, martial law and state of emergency on the initiative of the Government, an initiative decided by the Government as a body[11] . He or she is also the Commander-in-Chief of the armed forces.[12] It is important to note that if the position of President of the Slovak Republic is vacant, the above powers are exercised by the Slovak legislature, with the exception of the position of Commander-in-Chief, which is vested in the Head of Government.[13] The President of the Slovak Republic may declare war if the Slovak Republic is attacked by a foreign power, either by sending a declaration of war or by not sending a declaration of war, and - strangely enough, in a somewhat dogmatically incorrect way - the State Security Act also assigns to this situation the case of the fulfilment of obligations arising from international treaty relations, which does not always constitute an act of war, so it might be more appropriate to assign it to the state of war (which also seems an odd name next to war), but that also shows the difficulties of the classical division according to the direction of attack in the security context of the present day. A state of war should be declared when there is an imminent threat of a declaration of war or attack.[14]

[8] Tt. 460/1992. Constitution of the Slovak Republic (1 September 1992), [official translation into Hungarian: http://torvenytar.sk/zakon-31,], Article 102, paragraph 3.
[9] Constitution of the Slovak Republic Article 86 (k-m).
[10] Constitution of the Slovak Republic, Article 119.
[11] Constitution of the Slovak Republic, Article 119.
[12] Constitution of the Slovak Republic, Article 102.
[13] Constitution of the Slovak Republic, Article 105.
[14] Constitutional Law on State Security, Articles 2-3.

The Czech constitutional law, like the Slovak legislation, distinguishes between an actual war situation and an imminent threat of war. A state of war may be declared if the state is attacked or if an obligation under an international treaty requires it. The Czech legislature has the right to decide on martial law and the stationing of armed forces of other states on Czech territory. The legislature clearly has a dominant role in this matter, with the constitution setting out the possible scope for autonomous action by the government as a narrow exception: *"if the above cases do not exceed 60 days and are absolutely necessary for the fulfilment of collective defence obligations; in certain cases of peacekeeping operations; in the event of natural or industrial disasters; in rescue operations; in the case of participation in averting"*.[15] Martial law may be declared for the whole country. Gradualism is an important criterion since this status can only be declared if the authorisations of the other two branches are not sufficient to resolve the situation. A *state of threat to the state* can be declared when an external power *"directly threatens the sovereignty, territorial integrity or democratic foundations of the state"*.[16] This can only be ordered on a motion of the government with the support of an absolute majority of the bicameral legislature.[17] The lower house of parliament must decide within 72 hours of the initiative and the senate within 24 hours of the decision, the latter being deemed to have imposed the state threat if the deadline is not met. By contrast, a state of threat to the state may be declared not only for the whole country but also for a specific part of it. The neutral role of the President of the Republic can be observed since his powers in relation to the armed forces and special legal order, in addition to a weaker power of

[15] Constitution of the Czech Republic of 16 December 1992 No. 1/1993 Sb Articles 39, 43.
[16] 110/1998 Sb. Constitutional Act of 22 April 1998 on the Security of the Czech Republic, Article 7 (1).
[17] 110/1998 Sb. Constitutional Act of 22 April 1998 on the Security of the Czech Republic, Article 7.

appointment, are that he or she bears the title of Commander-in-Chief of the Armed Forces, but cannot take decisions without a countersignature.[18]

Polish legislation also recognises martial law,[19] which allows for the imposition of martial law if the Polish state is threatened by external aggression or is under external armed attack or in order to fulfil its international obligations of collective defence.[20] This is the basic function of the Polish Armed Forces, as defined in Article 26 of the Constitution, which states that they *"defend the independence and territorial integrity of the State and ensure the protection and inviolability of its borders"* and emphasises their political neutrality and civilian control.[21] It does, however, authorise the use of military force within Poland's borders in cases specified by law.[22] It is also worth noting that, in principle, it is the prerogative of the Chamber of Deputies to decide on martial law, but in the event of its being prevented from doing so, this power is also transferred to the President of the Republic.[23] The Polish Constitution, with a view to operationality, made it the right of the President of the Republic to declare martial law on the initiative of the Council of Ministers.[24] It is true that the President of the Republic must, within 48 hours, initiate a decision on the declaration by the Chamber of Deputies, which will immediately discuss the matter and may only reject the President's decision by an absolute majority.[25] In the context of the Polish system, I consider it important to outline certain powers of the President of the Republic that may be linked to special legal order, including martial law, on a case-by-case basis since, as an ordering authority, he or she can trigger important mechanisms. The most important of his/her powers is that he/she is the Commander-in-Chief of the Armed Forces, and in

[18] Constitution of the Czech Republic Article 63.
[19] The official English translation uses the term martial law.
[20] The Constitution of the Republic of Poland (As adopted by the National Assembly on 2nd April 1997), Article 229.
[21] The Constitution of the Republic of Poland, Article 26.
[22] The Constitution of the Republic of Poland, Article 117.
[23] The Constitution of the Republic of Poland, Article 116.
[24] The Constitution of the Republic of Poland, Article 229.
[25] The Constitution of the Republic of Poland, Article 231.

peacetime, he exercises that power through the Minister of Defence, and he/she is the person who appoints the Chief of the General Staff and the commanders of the branches of the armed forces. In times of war, he/she appoints the Commander-in-Chief of the Armed Forces on a proposal from the Prime Minister. The advisory body on internal and external security matters is the National Security Council (Rada Bezpieczeństwa Narodowego).[26] Its main function is to form opinions and give advice on general security issues, foreign policy principles and directions, the development of the armed forces, external security issues and the resources needed to combat threats to internal security.[27] Its members are appointed and dismissed by the President of the Republic.[28]

2.1.2. Rules for handling significant internal anomalies

Under the Slovak State Security Act, the President of the Republic may also declare a state of emergency on a proposal from the Government in the event of a terrorist attack or actual or imminent street disturbances.[29] The latter is defined in the legislation itself, which is very similar to the state of emergency rules currently in force in the Fundamental Law. According to the State Security Law, it is a series of events *"involving acts of violence against public authorities, looting of shops and warehouses or other acts of violence against property or other acts of mass violence against law enforcement bodies, which seriously threaten public security and where the restoration of order through action by the authorities or other legal means proves ineffective."*[30] An order may be issued for 60 days, which may be extended for a further 30 days.

In contrast to other situations, the Slovak legislation does not require the consent of the legislature or the President of the Republic to order the declaration of an emergency. The government may declare a state of

[26] The Constitution of the Republic of Poland, Articles 134-136.
[27] http://en.bbn.gov.pl/en/president-of-poland/national-security-coun/about-the-national-sec/99,The-National-Security-Council.html.
[28] The Constitution of the Republic of Poland, Article 144(3)(26).
[29] State Security Constitution Law, Article 4.
[30] SZINEK, János - SZINEK CSÜTÖRTÖKI, Hajnalka: i. m. p. 533.

emergency if an event that massively endangers human life and/or health occurs or there is an imminent threat of such an event. This may be a natural or industrial disaster or an epidemic.[31]

The Czech constitutional law merges the state of emergency and the state of danger under Hungarian law. Such a state may be declared in the event of a natural, ecological or industrial disaster or some other event that significantly endangers life and property, public order or public safety.[32] The government decides to declare a state of emergency but must immediately inform the Chamber of Deputies, which may overrule its decision.[33] In addition, Czech legislation provides for a fast-track procedure whereby the Czech Prime Minister can declare a state of emergency himself/herself in the event of imminent danger, which must be approved by the government within 24 hours.[34] A state of emergency can also be declared for a specific area of the country. In parallel with the declaration, the scope of fundamental rights affected by the restriction must be defined, which must be in line with the Charter of Fundamental Rights and Freedoms, and the government must also specify the obligations and the extent of obligations. A state of emergency may be declared for a period of 30 days, which may be extended with a prior consent of the Chamber of Deputies.[35] The management of the pandemic has shown that Czech crisis management is also a multi-stage system. As in the early stages of the epidemic, the Prague government used ordinary legal instruments, but the incredibly rapid spread and impact of the epidemic led to the declaration of a state of emergency, with measures

[31] State Security Constitution Law, Article 5.
[32] 110/1998 Sb. Constitutional Act of 22 April 1998 on the Security of the Czech Republic, Article 5 (1).
[33] 110/1998 Sb. Constitutional Act of 22 April 1998 on the Security of the Czech Republic, Article 5 (1) (4).
[34] 110/1998 Sb. Constitutional Act of 22 April 1998 on the Security of the Czech Republic, Article 5 (3).
[35] 110/1998 Sb. Constitutional Act of 22 April 1998 on the Security of the Czech Republic, Article 6.

having a wide-ranging impact, from fundamental rights to the functioning of the economy.[36]

Polish legislation, like the Hungarian one, treats emergencies and states of danger separately. The Polish state of emergency rules apply in times of some threat to the constitutional order of the state, the security of citizens and the public.[37] The Polish basic document does not provide for a simplified procedure, as it takes the side of effectiveness and leaves the decision to declare a state of emergency to the discretion of the President of the Republic, here also with the proviso that he must initiate a decision by the Chamber of Deputies within 48 hours.[38] This attitude is shared by Łukasz Szewczyk in his study, who even calls for further simplifications in his arguments. In his opinion, *"the constitutional legislator rightly took into account the need for the authorities to be concentrated in as few bodies as possible during a state of war, and for their decisions to be swift and decisive, which would be extremely difficult, if not impossible, in the laborious parliamentary procedures. Moreover, it is also worth considering whether, in the event of a specific threat, such as the preconditions for the declaration of a state of war, there is a need to bind two executive bodies to take decisions that are crucial to the functioning of the state, especially in view of the current terrorist threats. These threats could be aimed at paralysing the functioning of the vital Polish public sector and the functioning of public authorities. In such situations, the decision-making process should be simplified to the maximum extent possible for the effectiveness of the security system."*[39]

The Polish Constitution is the only one to contain specific rules on emergency situations as a special legal order. It may be ordered in the event of a natural or industrial disaster or in order to prevent such eventes.

[36] Jan LASÁK: Changes to Corporate Restructuring Laws in the Czech Republic During the Covid-19 Pandemic. European Business Organization Law Review. 2023/2. pp. 350-351.
[37] The Constitution of the Republic of Poland, Article 230.
[38] The Constitution of the Republic of Poland, Article 231.
[39] SZEWCZYK, Łukasz: Institution of Emergency States in Polish Jurisdiction. Practical Remarks, NAUKOWE, Zeszyty SGSP, no. 2020/74, p. 225.

The government's decision is sufficient to order it. The Polish constitution stipulates that if it is to apply to the whole country, it must be approved by the Chamber of Deputies and may last for a maximum of 30 days.[40] It can be seen that this option is outside the political arena and is subject to highly objective factors, so the Constitution does not contain any further restrictions beyond the general guarantees, only conceptual and temporal limitations. This is so much so that, in the background legislation, the legislator has defined the concept of a natural disaster in a flexible way so that the scope of measures can be adapted to the degree of an actual danger and the experts' experience.[41] The Polish system of empowerment in this area is multi-stage since, as the management of the pandemic caused by COVID-19 showed here, it includes normal legal empowerment for health emergencies, so after March 2020, the provisions of the Act on the Prevention and Management of Communicable Diseases were still applied, even if, as a rule, it empowered the regional administration with a toolbox of instruments but here the Minister of Health was the main responsible entity for crisis management, and besides the legislature also adopted a separate Act.[42]

2.2. Rules on the ordering of special measures of inquiry

The Slovak Constitution makes the rules of the order extremely simple, as the scope of war, martial law and state of emergency are decided by the President of the Republic[43] on the initiative of the government,[44] and the legality of the decision is judged by the Constitutional Court.[45] The President of the Republic has a discretionary power in these cases. As

[40] The Constitution of the Republic of Poland, Article 232.
[41] SZEWCZYK: ibid. pp. 219-220.
[42] PINKAS, *Jarosław* - *JANKOWSKI, Mateusz* - SZUMOWSKI, *Łukasz* - LUSAWA, *Aleksandra* - S. ZGLICZYŃSKI, *Wojciech* - RACIBORSKI, *Filip* - WIERZBA, *Waldemar* - GUJSK, *Mariusz*: Public Health Interventions to Mitigate Early Spread of SARS-CoV-2 in Poland, Medical Science Monitor, 2020/26.
[43] Constitution of the Slovak Republic, Article 102(1)(m).
[44] Constitution of the Slovak Republic, Article 119, point (n).
[45] Constitution of the Slovak Republic, Article 129(6).

explained in the previous chapter, the government itself decides on an emergency situation.

The Polish legislation also advocates effectiveness while maintaining guarantees, as martial law and states of emergency are declared by the President of the Republic on the initiative of the Council of Ministers, with the limitation that the Chamber of Deputies can annul the decision by an absolute majority, as described above, and allows a maximum period of 90 days during a state of emergency, which can be extended by the Chamber of Deputies for a maximum of further 60 days. As a general rule, a state of danger may be declared by the Council of Ministers. If it wishes to impose a state of danger with national effect, it requires a decision by the Chamber of Deputies and is possible for a maximum period of 30 days.[46]

Czech constitutional law presents a more complex picture. Martial law is decided by a majority of the legislature, but the initiator is not designated.[47] The declaration of a state of threat requires the support of an absolute majority of both houses of the legislature on a proposal from the government. In the case of a state of emergency, the government decides to declare it. In the case of an imminent danger, it is the prime minister, with the government's confirmation within 24 hours, however, both decisions may be annulled by the Chamber of Deputies.[48]

2.3. Empowerment issues under a special legal regime

For the Slovak legislation, the empowering provisions are contained in the State Security Act. The main addressee of delegations is the Government, but the Act also provides for specialised bodies. One such body is the Parliamentary Council, which is responsible for exercising legislative powers in the event of the Parliament being prevented from doing so. Another special body is the Security Council, which has

[46] The Constitution of the Republic of Poland, Articles 229-232.
[47] HOJNYÁK - SZINEK THURSDAY: ibid. p. 220.
[48] 110/1998 Sb. Constitutional Act of 22 April 1998 on the Security of the Czech Republic, Article 5, Article 7.

different powers in times of special law order and in times of peace. Whereas in peacetime, it acts as an advisory body to the government, with several subcommittees, in special times, it takes over the functions of the government in the event of its being prevented from acting, however, it cannot act on the government's programme or on its dissolution (vote of confidence). In peacetime, its role - which is very similar to that of the Supreme Defence Council under the Act II of 1939 on Defence[49] - is to prepare the country to deal with security risks. Territorial bodies are the regional and district security councils.[50]

The special legal provisions of the Czech Constitution empower the government to take the necessary measures. The Constitutional Law names the National Security Council (Bezpecnostni Rada Statu), which consists of the Prime Minister and the ministers entrusted by the government with this task. It is chaired by the Prime Minister, and its vice-chairs are the First Deputy Prime Minister and the Minister of the Interior. Its task is to draw up proposals determined by the government as necessary for the defence of the Czech Republic. In essence, it is an advisory decision-making body. The President of the Republic has the right to attend its meetings and request information from its members.[51]

The Polish constitution already states in its classification of the powers of the government that it is responsible for ensuring the external and internal security of the state as well as public order.[52] Accordingly, in the special legal order provisions, the Constitution confers powers on the Council of Ministers - i.e. the Government - for all three special legal

[49] See KELEMEN, Roland: Beyond the myths - self-perceived exceptional bodies of power in the history of the Hungarian constitution (From the Defence Commission to the Defence Council): Between Szkülla and Kharübdis - Studies on theoretical and pragmatic issues of the special legal order and its international solutions. Budapest, Hungarian Military Law and Military Law Society, 2020, pp. 113-147; KELEMEN, Roland. Védelmi-biztonsági Szabregelozási és Kormányzástani Műhelytanulmányok, 2022/5, pp. 4-35.
[50] SZINEK, János - SZINEK CSÜTÖRTÖKI, Hajnalka: ibid. p. 535.
[51] 110/1998 Sb. Constitutional Act of 22 April 1998 on the Security of the Czech Republic, Articles 5, 7, 9.
[52] The Constitution of the Republic of Poland, Article 146(4)(g) to (h).

orders.[53] In the case of a state of war, if the Assembly is prevented from acting, the President of the Republic may issue a decree with a force of law, but that must be confirmed by the Assembly at its next session.[54]

2.4. Constitution safeguards, prohibited or restricted subjects during a special legal regime

The Slovak Constitution is a curiosity in terms of constitutional guarantees - or, as the constitutional guard[55] has argued in earlier research -, which grants special powers to the Constitutional Court for this period. On the one hand, the Constitutional Court decides on the conformity of the order with the Constitution and other legislation, and on the other hand, it also examines the compatibility of the decrees issued during these periods with the Constitution and other legislation.[56] The possibility for members of the legislature to appeal to the Constitutional Court is somewhat easy since only one-fifth of the members of the legislature need to support the motion, which must be submitted within five days of the adoption of the legal norm under challenge, and the court has ten days to decide on the matter.[57] The Constitution leaves it to the provisions of law to be drafted in the light of the fundamental content of fundamental rights and the derogation rules of international treaties to determine whether and to what extent they may be limited during these periods.[58] In addition, there is a limitation on the powers of the Parliamentary Council, which may not, in the course of its work, draft a new constitution or amend an existing constitution or constitutional law, nor may it change the laws on referendums, political parties and elections, nor may it order the dismissal

[53] The Constitution of the Republic of Poland, Articles 229-232.
[54] The Constitution of the Republic of Poland, Article 234.
[55] See KELEMEN, Roland: The regulation of administrative adjudication and the guarantee complaint, or who was the guardian of the constitution in dualism? Acta Humana, 2016/2, pp. 95-116.
[56] Constitution of the Slovak Republic, Article 129(6).
[57] States of emergency in response to the coronavirus crisis: situation in certain Member States IV *(https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652002/EPRS_BRI(2020)652002_EN.pdf)* p. 11.
[58] Constitution of the Slovak Republic, Article 51.

or impeachment of the President of the Republic or enter into international obligations.[59]

The Czech constitution does not contain a derogation clause for the period of special legal order. In the case of the Czech Republic, the President of the Republic is given additional powers (e.g., to request information from the National Security Council and attend its meetings). In the case of a state of emergency, the Constitutional Law stipulates that a state of emergency cannot be declared to suppress a strike organised to protect fundamental rights or legitimate economic or social interests.[60]

Article 228 of the Polish Constitution stipulates that during such periods, no amendments may be made to the Constitution, the rules governing the election of the Chamber of Deputies, the Sejm, local government, the President of the Republic or to special legal order. During a state of emergency, the term of office of the Assembly may not be shortened for 90 days, and national referendums, elections to the Chamber of Deputies, the Senate and local government may not be held, and the President of the Republic may not be elected. Local elections may be held only in those places where special legal order has not entered into force.[61] In addition, the Constitution lists in Article 233 the fundamental rights that may not be derogated during special legal order and stipulates that the necessary restrictions may not be discriminatory. It also lays down the rights that may be restricted in the event of a state of emergency.[62] In addition, the well-established principles of Polish constitutional tradition, such as exceptionalism, legality, proportionality and expediency, are further guarantees, as they all provide safeguards for the rapid restoration of the 'normal' functioning of the political system and protect the established constitutional system against any temptations to centralise power. The principle of proportionality limits the state's vision of what,

[59] SZINEK, János - SZINEK CSÜTÖRTÖK , Hajnalka: ibid. p. 544.
[60] 110/1998 Sb. Constitutional Act of 22 April 1998 on the Security of the Czech Republic, 5. (2).
[61] The Constitution of the Republic of Poland, Article 228.
[62] The Constitution of the Republic of Poland, Article 233.

when and how authorities should use the means at their disposal to resolve the crisis. However, Spasimir Domaradzki records that the principle of proportionality *"has the striking weakness of not making explicit reference to restoring full respect for human rights and political freedoms."*[63]

3. Overview of Germanic or Continental Regulation

In the case of Austria and Germany, the historical traditions of regulation converge in terms of modelling.[64] The historical commonality between the two countries is undeniable, which can be seen in the current regulatory landscape, too. Hungary often turned to the legal systems of the two states for models in the development of its legal institutions, so the examination of the specific legal order of these states is not indispensable in this field of study.

Germany and Austria, of course, follow the European content model based on written constitutions. The 20th-century history of both countries has strongly influenced their current constitutional structure, and the German constitution, in particular, shows an overinsurance as to the applicability of certain instruments of state power. Both Austria and Germany are federal states, and that multi-levelism is also strongly reflected in their crisis management models and regulations. Some of their solutions, whether in terms of fundamental rights or organisational aspects, may be more interesting for us because we drew examples from them on several occasions in our history, and convergence may also result from their/our common membership of the EU, which could lead to the result - particularly in the case of the German state organisation, which

[63] DOMARADZKI, Spasimir: The Polish Parliament in the time of coronavirus. Instrumentalizing the pandemic in order to strengthen the grasp on power of the ruling party. Robert Schuman Foundation. (https://www.robert-schuman.eu/en/doc/ouvrages/FRS_Parliament_Poland.pdf). p. 4.

[64] See KELEMEN, Roland: The original systems of the continental model of exceptional power - The formation and development of the German and Austrian exceptional power structures up to the First World War. Defence Studies, 2021/3, pp. 126-134.

often provides Community models - that what works in Germany could also be regarded as a model in Brussels, and could then be reflected in directives or even regulations.

3.1. Special legal order rules of the Republic of Austria[65]

The Austrian constitution is in any case interesting in that, atypically among continental legal systems, it deals only to a rather limited extent with special legal order provisions. This is so much the case that it does not even specify, in relation to a state of emergency, at what intervals and by which senior official or body of the State power it may be declared.

Nevertheless, Austrian legal theory is unanimous in that Austrian constitutional law knows four different special legal situations: situations of war, acts against the order of the state, situations of catastrophies, and situations of economic and social crisis.

In the case of war, the federal army is commanded by the Federal President. The decision on war must be made by the federal assembly, meaning that the government cannot decide on that alone.[66] Therefore, it is the Federal President who can act as the recipient of powers in the event of war, natural disasters and other emergencies, and can act under the power of Notverordnungsrecht (emergency powers) in certain exceptional situations on the motion of the government.

Under Article 18 of the Federal Constitution:

> *"Article 18 (3) If, in order to avert damage irreparable to the public, it becomes necessary to take measures requiring a decision of the National Council at a time when the National Council is not in session, cannot meet in time, or is prevented from*

[65] Governmental powers and parliamentary control in the event of a state of emergency in the Member States of the European Union - Analysis for Members of Parliament, Representatives' Information Service, Parliamentary Office, April 2016, Budapest, pp. 4-5, see also GAMPER, Anna: Staat und Verfassung, Wien, Facultas, 2018

[66] CSEMÁNNÉ VÁRADI, Erika: Austria: 150 years of roots, 21st century solutions. In: NAGY, Zoltán – HORVÁTH, Attila (eds.): Special legal order and national regulatory models. Budapest, Mádl Ferenc Institute, 2021, p. 197.

acting by a higher power, the President of the Federation may, on the proposal of the Federal Government, take such measures, either on his own initiative or under its responsibility, by means of temporary decrees amending the law. The Federal Government shall make its proposal in agreement with a standing Subcommittee (Unterausschuss) to be set up by the Main Committee (Hauptausschuss) of the National Council [Article 55(2)]. Such decrees shall require the countersignature of the Federal Government.

(4) The Federal Government shall submit without delay any decree made under subsection (3) to the National Council, which shall be convened by the President of the Federation on one of the eight days following the day on which it is submitted, if the National Council is not in session at that time, and if it is in session, the President of the National Council shall be responsible for that purpose. Within four weeks of the submission, the National Council shall either replace the decree with an appropriate federal law or demand by resolution that the federal government immediately repeal the decree. In the latter case, the federal government must immediately comply with this demand. In order to ensure a timely decision by the National Council, the President shall put the proposal to the vote no later than the penultimate day of the four-week period; the detailed provisions are set out in the Rules of Procedure. Should the Ordinance be repealed by the Federal Government pursuant to the foregoing provisions, the provisions of the law which it repealed shall at the same time be reinstated.

(5) The decrees referred to in paragraph (3) may not have the effect of amending the provisions of federal constitutional law, nor of imposing a permanent financial burden on the Federation, nor of imposing a financial burden on the provinces, districts and municipalities, nor of imposing financial obligations on federal citizens, nor of disposing of State property, nor of taking measures

> *in the matters referred to in Article 10, paragraph 11, nor of taking measures in the field of the right of association or the protection of the interests of tenants."* [67]

The Federal Constitution contains two further provisions concerning the powers of the Government during the period of special law and order.

Under Article 25, in special situations, the Federal President may, on the proposal of the Government, convene the National Council in a place other than the City of Vienna.

Under Article 79:

> *"Article 79 (2) If the lawful civil power avails itself of the assistance of the Federal Army, the latter shall*
>
> *1. beyond the military defence of the homeland*
>
> *a) to defend the constitutional institutions, their functioning and the democratic freedoms of the citizens;*
>
> *b) to maintain internal order and security;*
>
> *2. it is intended to provide assistance in the event of disasters and calamities of exceptional magnitude."* [68]

Acts against the order of the state fall into two categories: acts against the constitutional order of the state and acts attacking internal order, so terrorist attacks would typically fall into this category. Under the provisions of the Constitution, the maintenance of order and security in such cases is the responsibility of the federal army.

The third category covers the classic forms of emergency, i.e. natural, industrial and health disasters, which are mainly under federal provincial power.[69] In other extraordinary, mainly internal, disasters, the Austrian Ministry of the Interior is the competent body for the protection of the population. Further regulation in exceptional, extraordinary and

[67] https://www.jusline.at/gesetz/b-vg.
[68] *https://www.jusline.at/gesetz/b-vg.*
[69] MS CSEMÁN: ibid. pp. 197-198.

situations of catastrophy is mainly the responsibility of the federal member states.

Definitely, the restriction of public services cannot be separated from the constitutional regulation of special legal order.

According to an analysis of Ferenc Mádl Institute, *"Since the Basic Law regulates rather narrowly, as shown above, the system of situation-dependent federal-level laws and provincial legislation, such as in the case of a crisis situation or epidemic crisis, is of great importance. This is partly the reason why, for example, in the context of federal legislation affecting certain armed services, specific powers to restrict public services are primarily defined to deal with a crisis situation such as a pandemic or disaster. A decisive feature of restrictive mandates relating to communications and media regulation, as well as the economy and transport, is that these are generally regulated at both federal and provincial levels. Thus, for example, in the case of a health emergency, the Epidemic (Disease) Act is prominent, which allows the government or the competent authorities to impose severe restrictions on fundamental rights under certain conditions. Thus, quarantine, exclusion of persons from educational institutions, their closure, restrictions on the use of water, foodstuffs and the operation of commercial enterprises may be imposed, but public security forces may also be involved (use of coercive measures), while the Minister of Health may even instruct the provincial governors if necessary."* [70]

The main centre for national crisis management in Austria is the Ministry of the Interior,[71] where the most important tasks of state crisis management are located, from disaster management to assistance in international disasters and civil defence. The department responsible for all this also operates two offices, one of which operates a 24/7 situation monitoring centre, the necessary trunk and call centre, and the other

[70] Restrictive regulation of public services in the field of defence, law enforcement and national security, Ferenc Mádl Institute for Comparative Law, Public Law Research Department 2020, p. 15.
[71] *https://www.bmi.gv.at/204/start.aspx.*

which carries out specific professional development work in the fields of civil defence, crisis and disaster management and relevant training.

Although there are few expressis verbis rules in Austrian constitutional law, that has not yet led to situations that threaten legal certainty, rule of law or constitutionality in practice.

3.2. The special legal order system of the Federal Republic of Germany

When the new Fundamental Law (Grundgesetz, GG) of the Federal Republic of Germany came into force in May 1949 after the Second World War, it was difficult to imagine that the new state would have independent armed forces again in the foreseeable future. Provisions for the army were, therefore, not to be found, but as tensions rose with the escalation of the Cold War, remilitarisation became inevitable. Simultaneously with the organisation of the Bundeswehr, the Fundamental Law was supplemented in 1956 with an amendment to the Fundamental Law called the 'Defence Constitution'. That was followed in 1968 by a further package of amendments defining special legal orders and the role of the armed forces in them.[72]

The central norm is Article 87a of GG, the first sentence of which reads: *'The federal government shall establish armed forces for the defence of the country'.* This makes it clear that national defence is a federal task. And Article 26 explicitly makes it unconstitutional to prepare for an offensive war. German armed forces are under civilian command, more specifically under the control of the Minister of Defence under Article 65a.

[72] For more information see e.g. WEINGÄRTNER, Dieter: Rechtliche Grundlagen deutscher Verteidigungspolitik, Bundeszentrale für politische Bildung, 2015, https://www.bpb.de/themen/militaer/deutsche-verteidigungspolitik/199281/rechtliche-grundlagen-deutscher-verteidigungspolitik/

Beyond the purpose of national defence, the armed forces may be used only if expressly authorised by the Fundamental Law, as provided for in Article 87a (2).

Compulsory military service is regulated in Article 12a (1) of the Fundamental Law, and Article 96a(2) allows armed forces to establish special military courts in a defence situation.

The text of the Fundamental Law clearly reflects a distrust of military forces, which is not surprising in the light of history. In addition to civilian control and the operational limits laid down in the constitutional rules, there is also increased parliamentary control, since the Bundeswehr's staffing and organisational structure is decided by the legislature through the adoption of the budget (Article 87a (1), second sentence). According to Article 45a, the Bundestag appoints a Defence Committee, which is responsible for the operational implementation of control.

Domestic security is primarily the responsibility of the police, but the army can provide support if needed, for example, by providing transport or accommodation or in disaster situations. In any case, it is worth mentioning that following the terrorist attacks of 11 September 2001, Germany also adopted special legislation on aviation security and terrorist hijackings (Luftsicherheitsgesetz),[73] which was also passed by the Federal Constitutional Court in 2003 and the Court substantially limited the original idea, according to which a hijacked aircraft cannot be shot down expressis verbis in order to protect the fundamental rights and human dignity of innocent passengers, and under the wording currently in effect, military air force is entitled now only to support police activities with the aim of avoiding disasters.

The basis for the deployment of German armed forces abroad is not to be found in the Fundamental Law either but in a 1994 Constitutional Court decision, which derived from Article 24(2) of the Fundamental Law that

[73] *https://www.gesetze-im-internet.de/luftsig/*

the Federal Government may authorise the deployment of German troops abroad under the auspices of the UN, NATO or the EU in the interests of peace-keeping and collective defence, subject to the approval of the Bundestag (Parliamentary Participation Act).[74]

In Germany, disaster management and civil defence are primarily the responsibility and competence of the Member States.[75] In addition to state rescue services and fire brigades, various charitable and voluntary organisations (e.g. Arbeiter-Samariter-Bund, DLRG »Deutsche Lebensrettungs-Gesellschaft e.V.«, the German Red Cross, Johanniter-Unfall-Hilfe and the Maltese Charity Service) also play a very important role on the basis of close professional cooperation.

The federal state is involved when a disaster affects several Member States and requires significantly greater resources, the details of which are laid down in a separate law (Gesetz über den Zivilschutz und die Katastrophenhilfe des Bundes).[76]

In the case of Germany, the Fundamental Law[77] regulates two special legal order periods in relation to external security expressis verbis as "tension" situations (Spannungsfall) and defence situations (Verteidigungsfall), and in two further cases it allows for similar exceptional procedures, namely in the event of internal security emergencies and disasters. The legislation is already quite extensive and precise at the level of the Fundamental Law, and it is supplemented by a number of other laws to ensure the continuity of state action, which together form the German system of "Security Laws", defining the rules

[74] *https://www.gesetze-im-internet.de/parlbg/BJNR077500005.html*
[75] For details, see SCHÄLLER, Steven: Federalism and Sovereignty in the Federal State, Dresden, Springer VS, 2013; FREIHERR, Karl-Theodor zu GUTTENBERG: Constitution and Constitutional Treaty, Berlin, Duncker & Humblot, 2009; Who does what in civil protection and disaster prevention?
https://www.bmi.bund.de/DE/themen/bevoelkerungsschutz/zivil-und-katastrophenschutz/gefahrenabwehr-und-katastrophenschutz/gefahrenabwehr-und-katastrophenschutz-artikel.html)
[76] https://www.gesetze-im-internet.de/zsg/BJNR072610997.html)
[77] https://www.gesetze-im-internet.de/gg/BJNR000010949.html.

of cooperation and division of tasks between the Länder and the federal state. In principle, the government, the Federal Chancellor,[78] is the authorised body for special legislation.

The main relevant provisions of the Fundamental Law[79] are summarised below.

Pursuant to Article 35, if a natural disaster or catastrophe threatens the territory of more than one province, the Federal Government may, if necessary for effective protection, order the provincial governments to place their police forces at the disposal of other provinces and deploy units of the Federal Border Guard and the Federal Police to support law enforcement forces. The measures of the Federal Government shall lapse by decision of the Bundesrat or when the danger has ceased.

According to Article 53, the Federal Government is obliged to inform the Joint Committee of the measures it plans to take in the event of a security situation.

Article 81 stipulates that, unless the Federal Assembly (Bundestag) is dissolved, the Federal President may, on the proposal of the Federal Government and with the approval of the Federal Council, declare a state of legislative emergency in respect of a bill if the Bundestag rejects it, even though the Federal Government has declared it urgent.

As long as, after the declaration of a legislative state of emergency, the Federal Assembly again rejects the bill or adopts it in a wording unacceptable to the Federal Government, the bill shall be deemed to have been passed if approved by the Federal Council. The same shall apply if the bill is not discussed by the Federal Assembly within four weeks of its being sent again.

[78] HOFFMAN, István – KÁDÁR, Pál: The administrative law challenges of the special legal order and crisis management I. Defence Security Regulatory and Governance Workshop Studies, 2021/2, p. 15.
[79] Congressional Information Service, ibid. pp. 30-33.

Other bills rejected by the Federal Assembly during the term of office of the Federal Chancellor may also be passed within six months of the first proclamation of a legislative state of emergency. With the end of that period, legislative emergency may not be proclaimed again during the term of office of the same Federal Chancellor.

The Constitution may not be amended or repealed in whole or in part by a law adopted in such situations.

Article 87 provides that, in order to avert a threat to the existence or the free and democratic order of the Federation or a province, the Federal Government may, if the conditions laid down in Article 91(2) are fulfilled, or if police forces and the Federal Border Guard are insufficient, call upon the armed forces to assist the police and the Federal Border Guard in the protection of civilian population and in a fight against organised and armed insurrection.

According to Article 91, in order to avert a threat to the existence of the Federation or of a province or to the fundamental free democratic order, a province may call upon the police forces of other provinces, as well as other institutions and the personnel and material resources of the Federal Border Guard.

Paragraph (2) states that if the province threatened by some danger is not ready or able to combat the danger alone, the federal government may place the police forces of that province and of other provinces under its command and may also call upon the services of the federal border guards. The provision shall be repealed after having averted the danger; otherwise, it shall be repealed in any case at the request of the Federal Council. If the danger threatens the territory of more than one province, the Federal Government may, to the extent necessary for effective defence, instruct the governments of the provinces; still observing the first and second sentences.

With the declaration of a state of defence, the right to command and control the armed forces is transferred to the Federal Chancellor. The Federal Government shall submit such bills as it deems urgent to the

Federal Council, at the same time as it submits its bills to the Federal Assembly. The Federal Assembly and the Federal Council shall without delay discuss these bills together. If a law requires an approval by the Federal Council, the law shall require an approval of the majority of their votes. The details shall be governed by the Rules of Procedure adopted by the Federal Assembly and approved by the Federal Council.

If circumstances make it necessary, in a defence situation, the federal government

- may deploy the Federal Border Guard throughout the Federation;
- in addition, the federal administration may, if it considers it urgently necessary, give instructions to provincial governments and delegate their powers to specific members of the provincial governments.

The Federal Assembly, the Federal Council and the Joint Committee shall be informed immediately of the measures adopted.

If the competent federal authorities are deprived of the possibility of taking the measures necessary to avert the danger and the situation urgently requires immediate independent action in certain parts of the territory of the Federation, the provincial governments or as well as authorities or agents designated by them shall be empowered, within the limits of their powers, to take measures which may be annulled at any time by the premiers of the provinces in relation to the federal government or provincial authorities and the subordinate federal authorities.

Under the Constitution, restrictions may be imposed on fundamental rights in exceptional circumstances (confidentiality of correspondence, postal and telecommunications secrecy, freedom of movement, health services), but in all cases it must be based on a legal authorisation.

Based on an analysis by Ferenc Mádl Institute:[80] *"...in a crisis situation, the ability to restrict public services in Germany is inseparable from the fact that the system of mandates for special legal situations is very narrowly defined. This has an impact on the framework for the deployability of the armed forces, and is further complicated by the system of division of powers between the Federation and the Länder. Accordingly, the federal legislation establishing the individual armed services does not generally contain specific powers to restrict public services. There are a few examples where restrictions are imposed on the actions of public bodies to deal with a crisis.*

What is striking about restrictive mandates relating to media regulation, the economy and transport is that these are generally areas that fall under the legislative powers of both the Federation and the provinces. Accordingly, the Federal Basic Law provides the relevant framework of fundamental rights, which is generally fleshed out by federal legislation relating to the "situation" (crisis situation) and supplemented by the relevant provincial legislation. This regulatory model is characterised by the fact that, due to German historical experience, the empowering provisions and their observance are subject to dispute, as is the divergence between the individual Länder 'rights'.

There was a dispute over the domestic deployment of forces for any purpose other than defence (including public services), which was subsequently somewhat relaxed. As an example of federal regulation linked to a "situation" (crisis), the Federation's possibilities for action have been extended by amendments to the law in the wake of the Crown virus (the Federal Minister of Health can introduce a number of measures restricting public services), but this is not without constitutional controversy."

[80] Restrictive regulation of public services in the field of defence, law enforcement and national security, Ferenc Mádl Institute for Comparative Law, Public Law Research Department 2020, p. 20.

Germany's civilian crisis management organisation is primarily provided by the Federal Ministry of the Interior, Building and Home Affairs (BMI).[81] The Ministry of the Interior is responsible for the civilian security of cyberspace, and the Cyber Defence Strategy presented by the Ministry in 2016 provides the federal government's cross-sectoral strategic framework in this sphere. The Government Commissioner for Information Technology, who also chairs the Cybersecurity Council, coordinates the implementation of the strategy. The Ministry includes the Federal Police, the BKA (Bundeskriminalamt - Federal Criminal Police Office), the BSI (Bundesamt für Sicherheit in der Informationstechnik - Federal Office for Information Security), the BfV (Bundesamt für Verfassungsschutz - Federal Office for the Protection of the Constitution) and the BBK (see below). It has established the ZITiS as a central IT knowledge centre by decree.

The Federal Office for Civil Protection and Disaster Assistance (Bundesamt für Bevölkerungsschutz und Katastrophenhilfe, BBK),[82] set up in Bonn in 2004, is also active in the field of cyber defence, focusing on potential attacks and risks to critical infrastructures. It operates the continuously active Joint Reporting and Situation Centre and is a major player in the UP KRITIS initiative. The Joint Reporting and Situation Centre (Gemeinsames Melde- und Lagezentrum, GMLZ)[83] also produces daily reports.

The UP KRITIS (Umsetzungsplan Kritische Infrastrukturen)[84] programme is a public-private cooperation exercise to ensure the functioning of critical infrastructures, involving public authorities,

[81] https://www.bmi.bund.de/DE/themen/it-und-digitalpolitik/it-und-cybersicherheit/it-und-cybersicherheit-node.html.

[82]https://www.bbk.bund.de/SubSites/Kritis/DE/Publikationen/Sektoruebergreifend/Leitfaeden/Sicherheit%20und%20Verantwortung%20im%20Cyber-Raum.html.

[83]https://www.bbk.bund.de/DE/AufgabenundAusstattung/Krisenmanagement/GMLZ/GMLZ_node.html.

[84]https://www.kritis.bund.de/SubSites/Kritis/DE/Aktivitaeten/Nationales/UPK/UPKOrganisation/upk_organisation_node.html;jsessionid=CAAB2F9E7BCCF6E6C3AF26C705F8EED7.1_cid320.

critical infrastructure operators and their professional associations, as IT and communication technologies play an increasing role in their operations. On the State side, the primary participants in the cooperation are the Ministry of the Interior, the BSI as the national information technology security service and the BBK, which is also responsible for civil protection and disaster response.

3.3. Conclusions on the Germanic special legal systems

In both Austria and Germany, there is a strong constitutional determination complemented by effective constitutional review. In both cases, the 20th-century history of the two states, beyond the legal development of liberal democracies and fundamental civil and human rights, also gives rise to a number of guaranty requirements that are less evident in more stable states. However, it is also true that, in response to the security requirements of the turn of the new millennium, the governance of these countries is also seeking to meet the challenges through a series of significant institutional developments. The system of state crisis management shows a 'scaling up' of the tools available to state organisations, adapted to the crisis in question. The scope of responsibility between the provinces and the federal level is primarily determined by the scale of the problem as well as the extent of the resources and coordination required.

4. Special legal order rules in the Kingdom of Spain

The Spanish-specific legal order is characterised by its historical determinacy, which is already evident in the definition of the various elements, and thus illustrates the ideas expressed in the introduction but also by specific solutions that can serve as a model in the modern era of staggered security challenges.

4.1. Special legal situations covered

Article 116 of Spain's Constitution lays down the most general rules on special legal order. This section distinguishes between states of alert (el estado de alarma), states of emergency (el estado de excepción) and states of siege (el estado de sitio). [85]

4.1.1. Emergence and regulation of a state of siege

The state of siege type of regulation in Spain is a hybrid type since it includes, also embedded in the Hungarian state of emergency, those elements that combine internal attacks on the constitutional order of the state, thus the types of non-international armed conflict, i.e. civil war; resistance movements; mass uprisings; and insurrections. But it also responds to external violence. This regulation follows French-specific legal tradition, which is obviously a transposition of historical experience, and it is also a reaction to historical experience or to the possible separatist radicalisation of secessionist communities currently enjoying autonomy, which is far from an impossible narrative in the case of the Catalans or the Basques.

As a result, el estado de sitio may be ordered in all cases where the use of force to combat an act of violence that threatens the sovereignty, independence, territorial integrity or constitutional order of Spain cannot be achieved by other means. [86]

This duality is also reflected in the role of the armed forces, which is to safeguard and secure Spain's sovereignty, independence, territorial integrity and constitutional order. That is in accordance with the provision of Article 2, namely that Spain is the common, indivisible and

[85] The Spanish Constitution (Passed by the Cortes Generales in Plenary Meetings of the Congress of Deputies and the Senateheld on October 31, 1978, Ratified by the Spanish people in the referendum of December 7, 1978 Sanctioned by His Majesty the King before the Cortes on December 27, 1978) (official English translation: https://www.tribunalconstitucional.es/es/tribunal/normativa/Normativa/ConstitucionINGLES.pdf), Article 116.
[86] Ley Orgánica 4/1981, de 1 de junio, de los estados de alarma, excepción y sitio (https://www.boe.es/buscar/doc.php?id=BOE-A-1981-12774) Article 32.

indissoluble homeland of all Spaniards and includes the possibility of ordering the use of the armed forces in any case where this is threatened in accordance with a state of siege. Armed forces may, therefore, also be used to maintain internal unity. [87]

4.1.2. Emergence of emergency-type rules

In Spanish legislation, in addition to state emergency legislation, there is a related lower degree of escalation, the so-called state of alert.

Alert preparedness is partly similar to Hungarian emergency but also includes crisis-type elements, so it clearly reflects a gradual crisis management approach. This precursory or threshold situation may be declared when a natural or industrial disaster or health crisis has occurred in the whole or part of the country, seriously disrupting the functioning of state, or when essential public services have been paralysed, or critical shortages of essential goods have occurred.[88] For the latter, the regulation does not specify the causes, which could imply a wave of strikes that paralyses the country or part of it or even acts of violence that could trigger such a situation. The former is not unprecedented in European constitutional development, as the Emergency Power Act adopted in the United Kingdom in 1920 was designed for a similar purpose, i.e. to suppress more serious strikes, even by the military, and was in force until 2004, after amended in 1964.[89]

A state of emergency may be declared when the exercise of citizens' fundamental rights and freedoms, the normal functioning of democratic institutions, and public services essential to their communities or public order are threatened to such an extent that normal functioning cannot be maintained or restored by ordeinary state means.[90]

[87] See Articles 2 and 8 of The Spanish Constitution.
[88] Ley Orgánica 4/1981, Article 4.
[89] KELEMEN, Roland: The history of the British exceptional power from its beginnings to the Second World War. Law State Politics, 2020/2, pp. 53-65.
[90] Ley Orgánica 4/1981, Article 13 (1).

With this duality, the constitutional wanted to enable the all-time government to deal more effectively with minor anomalies that disturb the functioning of state, so that they do not escalate to a higher level. This is reinforced by the power conferred by Article 55 (2) of the Constitution and the legislative power conferred on the Government under Article 86. Namely, Article 55 allows for the suspension, by judicial authorisation, of the fundamental rights and guarantees contained in Article 17 (2) (pre-trial detention) and Article 18 (2) to (3) (protection of private dwelling, protection of privacy [of mail, telephone]) of the Constitution, within the framework of the organic law, if the subject of the investigation is an activity linked to an armed organisation or terrorist group.[91] Additionally, Article 86 provides a possibility for the government to adopt temporary substitute provisions in the form of a decree-law in cases of extreme necessity and urgency. All that with restrictions that the legislation on fundamental institutions of the State, fundamental rights and obligations under Title I, the legislation on the system of autonomous communities and universal suffrage are prohibited. In addition, the decree must be submitted to the Congress of Deputies within 30 days of its promulgation, which will either confirm it and thus incorporate it into law, or repeal it.[92]

4.2. Rules on ordering special legal situations

As regards the rules on disposition, the gradual nature of the structure of the three categories of special legal order at the level of the facts can also be observed. Thus, the government may declare a state of alert by means of a decree of the Council of Ministers, which must specify the area covered by the state of alert and the duration of its application, the latter being subject to a restriction that the government may use this instrument for a maximum of 15 days without legislative authorisation. The Cabinet shall immediately inform the Congress of the fact of the order, which may, if it so deems, authorise an extension of a 15-day period.[93] Spain has

[91] The Spanish Constitution, Article 55 (2).
[92] The Spanish Constitution, Article 86.
[93] The Spanish Constitution, Article 116(2).

several constitutional territorial units enjoying autonomy because of its specific historical past. For these, the legislation allows the President of an autonomous community concerned, if the situation were to affect only the territory of that community, to ask the Government to declare a state of alert, but again, only the Congress may decide to extend the 15-day deadline.

In the case of the state of emergency, the Constitutional Court also opted for effectiveness and, in some cases, for the fastest possible action, as it gave the power to impose it to the Government, which may do so by decree but with the restriction that the Congress must give its prior consent to the decree.

Such approval shall be asked for in the form of a request to the Congress of Deputives, which must specify, inter alia, the fundamental rights concerned (which is solely be limited to Article 55 (1)), the scope of measures to be introduced, the geographical area covered by the state of emergency and its planned duration, which may not exceed 30 days. Here again, we can see a gradualism in the Spanish system since, as we have seen, the time limits are shorter at lower levels of escalation. Unsurprisingly, the possibility of extending the deadline is also in the hands of the legislature, with the proviso that they can only extend it by the same length of time.[94] It is worth noting here that the government is bound by the scope of action set out in its request in case of being authorised. If it wishes to extend the scope of action for reasons of the situation, it must request an amendment to the mandate from the Congress.[95]

A state of siege may be imposed by an absolute majority of the Congress at the request of the government. The decision to impose a state of siege shall specify the framework, territorial scope and duration of the state of siege.[96]

[94] The Spanish Constitution, Article 116, paragraph 3.
[95] Ley Orgánica 4/1981, Articles 13-15.
[96] The Spanish Constitution, Article 116, paragraph 4.

The gradation is therefore also noticeable in the regulation of the order, since while the government's decision is sufficient for an emergency-type authorisation, the authorisation of the state of emergency requires an approval of the Assembly, while a state of siege may only be ordered on the basis of an absolute majority decision of the Congress.

4.3. Empowerment issues as regards special legal regime

For all three situations of special legal rules, the government is the delegate. That necessarily follows from the basic function of government under Article 97, which is to direct internal and foreign policy, civil and military administration and the defence of the State. To reinforce that, the Constitution stipulates that in cases of treason and offences endangering the security of the State, a member of the Government may be held responsible, in which case the King's right to pardon cannot be invoked.[97]

During a state of alert, all civil authorities of the administration of the territory covered by the decree, the police forces of the autonomous communities and members of local companies, as well as other officials and employees on duty, are obliged to provide the emergency services necessary for the safety of persons, property and infrastructure, as directed by competent authorities under the direction of the government. Local authorities concerned may request the assistance of the State's public security services, the Civil Guard (Guardia Civil) and the National Police (Cuerpo Nacional de Policía). During these periods, restrictions may be imposed on freedom of movement and consumption of certain products, among other things, and also industrial management regulations may be issued.[98]

In times of emergency, the government is also empowered to restrict fundamental rights as provided for in an organic law. It can modify the rules on detention, search and surveillance (postal and telephone communications), restrict freedom of movement, freedom of the press,

[97] The Spanish Constitution, Articles 97, 102.
[98] Ley Orgánica 4/1981, Articles 9-12.

and confiscate publications, but none of these can result in prior censorship. It can also restrict the right of assembly, with the power to dissolve, except for party and trade union meetings under Articles 6-7 of the Constitution. It can prohibit workers' means of collective industrial action (such as strikes). It can also order the seizure of arms, ammunition and explosives, impose industrial restrictions, authorise the protection of property and, if the conditions laid down in the alert clause are met, use the powers provided for therein.[99]

During a state of siege, the government is also empowered to have a specific set of tools at its disposal, both for alert and emergency situations, and introduce military administration in the affected areas, which coordinates the necessary measures while informing the authorities. Beyond that, civilian authorities shall exercise all powers not expressly conferred by the government on military authorities, but civilian authorities shall, to the greatest extent necessary, be required to report to military authorities. Military jurisdiction may also be introduced for the range of offences specified by the Congress in the relevant area.[100] The significance of that is further illustrated by the fact that Article 15 of the Constitution states that death penalty is prohibited, except in time of war under military criminal law.[101]

4.4. Constitutional safeguards, prohibited or restricted subjects during special legal regime

However, in addition to the rules that help with operationality, the Spanish Constitution also provides a wide range of guarantees. The Congress of Deputies cannot be dissolved during a period of special legal order and must be convened in the cases already discussed above. If a special legislative order is necessary while the Congress is dissolved or at the end of its term, a permanent delegation from the former Cortes must

[99] Ley Orgánica 4/1981, Articles 16-31.
[100] Ley Orgánica 4/1981, Articles 32-36.
[101] The Spanish Constitution, Article 15.

be in operated. Additionally, the government must inform the Congress of its decrees issued during a state of emergency.

Judicial review of an alert decree and its extension is a contentious issue in Spanish philosophy of constitutional law, namely, which court has jurisdiction: the Constitutional Court or the Supreme Court. Past practices on that issue may provide useful guidance: between 2011 and 2012, the Supreme Court approved seven decisions, all of which rejected jurisdiction to review the legality of government regulations. The court held that the government acted as a constitutional body because it exercised powers directly regulated by the Constitution, not administrative law, also pointing out that the regulation was adopted by Congress, which authorized its extension. The Court considered that, as it was a decision of Congress, it should be subject to judicial review by the Constitutional Court, since these regulations are not administrative acts, as confirmed by the Constitutional Court in 2012 and 2016.[102]

The functioning of other constitutional organs of the state also cannot be interrupted, nor can the rules of responsibility regarding the government, already mentioned above, be changed. A special court cannot be established, nor can a constitutional amendment be initiated during a special legal order. Furthermore, article 55 (1) of the Constitution lists the rights that may be suspended during a state of emergency or siege.[103]

It is important to note that during a threshold state of alert, i.e. a period of alert, fundamental rights can be restricted but not suspended, *"as only derogations from rights, not restrictions on them, need to be notified to the Secretary General of the Council of Europe and the UN in order to comply with relevant human rights obligations."*[104] However, the

[102] LINERA, Miguel Ángel Presno: Beyond the State of Alarm: COVID-19 in Spain, VerfBlog, 2020/5/13, (https://verfassungsblog.de/beyond-the-state-of-alarm-covid-19-in-spain/).
[103] NÉMETH, Zoltán: Spain, where the special legal order is really special. In: NAGY, Zoltán – HORVÁTH, Attila (eds.): A special legal order and national regulatory models. Budapest, Mádl Ferenc Institute, 2021, p. 554.
[104] CEBADA ROMERO, Alicia; REDONDO, Dominguez, Elvira: Spain: One Pandemic and Two Versions of the State of Alarm, VerfBlog, 2021/2/26

pandemic also pointed to weaknesses in the legislation, as the organic law does not provide an adequate legal basis for determining the division of powers between the central government and autonomous communities, and some authors argued that the measures introduced were not restrictions on fundamental rights but suspensions, a view not shared by other authors and the Ombudsman's office.[105] Nevertheless, these issues show that the Spanish system is also ripe for revision.

5. The home of the siege archetype - the French special legal order

Specific legal order provides a wide range of solutions, taking into account constitutional traditions, historical precedents, governance specificities and the complexity of challenges around the world. A wide range of solutions can be found: from complete lack of regulation (e.g. Austria, Cyprus), to constitutional regulation of the state of war, and to strict and detailed constitutional solutions that consistently bind the executive, with the aim of getting rid of the shadow of dictatorships once and for all. The French legal order occupies a special place in this spectrum, being in the middle of this broad spectrum, both in terms of the design of regulatory levels and the elaboration of normative framework.

In order to deal with exceptional situations which are a particular test of peacetime legal framework, France has raised three specific legal orders to the level of legislation:

- Article 16 of their constitution on extraordinary presidential powers *(pouvoirs exceptionnels)*,

(https://verfassungsblog.de/spain-one-pandemic-and-two-versions-of-the-state-of-alarm/).

[105] Quadra Salcedo: Límite y restricción, no suspensión; por Tomás de la Quadra-Salcedo, catedrático emérito de la Universidad Carlos III y exministro de Justicia. Iustel, 08/04/2020
(https://www.iustel.com/diario_del_derecho/noticia.asp?ref_iustel=1196904).

- Article 36 provides for a state of siege *(état de siège)* rooted in the French Revolution and
- in 1955, before the Constitution of the Fifth Republic of 1958, the legislature laid down emergency provisions *(état d'urgence).*

5.1. The state of siege

Article 36 of the French Constitution is rather restrictive at the constitutional level regarding the rules of state of siege: its proclamation can be made by a decree of the Council of Ministers, and prolongation beyond 12 days is possible by the decision of Parliament.[106] The more detailed provisions, including those on implementation, are already laid down at statutory level in the *Code de la défense.*

According to the Defence Act, the circumstances giving rise to the declaration of a state of siege may be an imminent threat of a foreign war or an armed insurrection, and the Council of Ministers' proclamation decree shall specify the territorial and temporal scope of the state of siege as a mandatory content requirement.[107] The duration is capped at 12 days, as already constitutionally defined, with any extension being approved by Parliament on a proposal from the Council of Ministers. The Council of Ministers may not propose amendments to the proposal. [108]

The Defence Act preserves in the detailed provisions of the state of siege a number of elements that were still laid down in the law of 19 August 1849: civil law enforcement powers are transferred to military authorities, and the military courts are given jurisdiction to try any offence against

[106] "L'état de siège est décrété en Conseil des ministres. Its prorogation au-delà de douze jours ne peut être autorisée que par Parlement." (The state of siege is decided by decree of the Council of Ministers. Its prolongation beyond 12 days may only be authorised by Parliament.") Artice 36 de la Constitution du 4 octobre 1958.
[107] Article L2121-1 de la Code de défense.
[108] Article 131, sub-paragraph 1 of the Rules of Procedure of the National Assembly (Règlement de l'Assemblée Nationale). In addition to the rules on the state of siege, this article also contains rules of procedure for deciding on the deployment of military forces abroad.

the Constitution, the security of the Republic, or public order and tranquillity. Military authorities may, in the exercise of their law enforcement powers, carry out searches at any time of the day, expel persons from an area under siege, order the surrender of arms and ammunition, confiscate them if necessary, and prohibit gatherings and the publication of notices dangerous to public order.[109]

5.2. The extraordinary powers of the President

Article 16 of the Constitution defines in much greater detail – in comparison with the state of siege – the content of extraordinary presidential - i.e. executive - power of action. The text of the constitution does not refer detailed rules to the statutory level, which necessarily justifies a more detailed content and a wider scope of this type of special legal order. The article of the de Gaulle constitution, which was for a long time described as a dictatorial measure *('liberticide'[110]),* gives the president a blank cheque of powers to take action in cases where the institutions of the republic, the independence or territorial integrity of the nation or the fulfilment of the country's international commitments are in serious and immediate danger, while the normal functioning of constitutional institutions is practically interrupted. This exceptional power of action, as a constitutional authorisation, is, even in the circumstances described above, lawful only on condition that the President has consulted the Prime Minister, the Presidents of the two Houses of Parliament and the Constitutional Council.[111]

The Article requires the President to inform the nation, too, of the measures taken, in addition to the above-mentioned obligation of

[109] Article L2121-2 - Article L2121-8 de la Code de Défense.
[110] The term is best translated as "freedom-killing".
[111] "Lorsque les institutions de la République, l'indépendance de la Nation, l'intégrité de son territoire ou l'exécution de ses engagements internationaux sont menacés d'une manière grave et immédiate et que le fonctionnement régulier des pouvoirs publics constitutionnels est interrompu, le Président de la République prend les mesures exigées par ces circonstances, après consultation officielle du Premier ministre, des Présidents des Assemblées ainsi que du Conseil constitutionnel."

consultation, but the form of this is left relatively broad, both practically and, indeed, prognostically, given the technical possibilities.[112] The measures are limited to the territory of the country as a whole and may be targeted exclusively at the functional restoration of constitutional institutions. No more precise definition has been given in the context of the extraordinary power of attorney, which has a special legal weight. That may be explained by the dynamism and diversity of the circumstances giving rise to the power, but the statement should be supplemented by the fact that the Council of State, in its 1962 decision, laid down additional elements of guarantee while retaining the right to control the legality of presidential measures. Exceptions to that control can be found in the exclusive legislative powers provided for in Article 34 of the Constitution.[113]

A further democratic guarantee is that the National Assembly may be dissolved during an extraordinary presidential term, that Parliament is in session, and that measures taken under special legal order expire after 30 days. Subsequent to that deadline, the Constitutional Council will review the circumstances that gave rise to the measures, which may be proposed in advance by the President of the National Assembly, the President of the Senate, 60 deputies or 60 senators. Even in the absence of such a motion, extraordinary presidential powers may be exercised for a maximum of 60 days, after which the Constitutional Council shall review the status of the circumstances giving rise to the motion ex officio and decide whether to extend or terminate extraordinary presidential powers.

5.3. State of emergency

The Council of Ministers may declare a state of emergency in cases where there is an imminent threat of a serious breach of public order or where the nature and gravity of circumstances are such as to affect public order

[112] "Il en informe la Nation par un message." (He informs the Nation by a message).
[113] Décision N° 55049 55055 de Conseil d'Etat.

to such an extent.[114] Like a state of siege, a state of emergency may be declared for the whole country or for specific parts of it. The rules for its extension beyond 12 days shall be laid down by law. Its extension, like its proclamation in principle, may be subject to a time limit. A related rule of significance is that following the resignation of the Government or the dissolution of the National Assembly, the law extending the term will expire within 15 days. Whether a state of emergency in such a situation can "survive" the transformation of the state structure is not settled by normative rules. By the promulgating decree, the Government will be empowered to take action, with an obligation to inform the National Assembly and the Senate of its provisions without delay. These two bodies must be provided by public authorities with all the necessary material for the sake of an effective evaluation of the measures.[115]

The flexibility of regulation at the statutory level, even if only relatively, as compared to the constitutional level, has on several occasions allowed the Government (in particular the Minister of the Interior) and the prefects in charge at the territorial level to adapt the restrictive measures they can take to the current trends in security challenges. These measures include, for example, the handing over of weapons and ammunition, the restriction of vehicles and persons on the movement of persons, both in terms of location and time, the banning of persons who obstruct the activities of authorities from a given area, the establishment of protection and security zones to regulate the presence of citizens in a given area, the dissolution of associations and groups that seriously threaten public order. Several examples of threat-based measures against persons posing a threat to public order and public security can be cited, such as house searches which can be carried out at night and during the day, or house arrest, which can be extended for a maximum of 12 months without effective judicial review but can be extended for a further three months.

[114] "en cas de péril imminent résultant d'atteintes graves à l'ordre public, soit en cas d'événements présentant, par leur nature et leur gravité, le caractère de calamité publique." Article 1 de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence.
[115] Article 2 Article 4-1 de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence.

The period following the Paris attacks in 2015 was a test of the state of emergency in many more ways than any previous challenge. During that time interval, the National Assembly was elected, Emmanuel Macron was elected President of the French Republic, and the application of the European Convention on Human Rights was partially suspended.[116] The period has been questionable for public opinion and legal thinkers not only because of the efficiency of the measures but also their extension over several years. The various domestic measures directly invoking the state of emergency were essentially concentrated in greater numbers in the first six months[117] and, in many cases, were overshadowed by allegations of unjustified abuses.[118] In the light of further terrorist attacks following the Paris attacks, the measures could rightly be criticised for not having achieved spectacular results for a long time, but the time that has elapsed since then suggests increasing effectiveness of both law enforcement and counter-terrorism measures aimed at reducing terrorism.

5.4. Conclusions concerning the French special legal order system

Both the narrow wording of French state of siege and the provisions of extraordinary presidential powers, which are constitutionally limited, and their application, which has been negligible over the last century and is

[116] Under Article 15 of the European Convention on Human Rights, States Parties may use the (almost) total suspension in the event of a threat to the life of their nation. However, the right to life, the prohibition of torture and inhuman treatment, the prohibition of slavery and the prohibition of imposing punishment without due process of law cannot be suspended during this period. For the French suspension, see "La France informe le Secrétaire Général de sa décision de déroger à la Convention européenne des droits de l'homme en application de son article 15." COE.int. 25 November 2015. https://www.coe.int/fr/web/secretary-general/home/-/asset_publisher/oURUJmJo9jX9/content/france-informs-secretary-general-of-article-15-derogation-of-the-european-convention-on-human-rights?desktop=false (accessed 13 October 2022).

[117] See http://www2.assemblee-nationale.fr/14/commissions-permanentes/commission-des-lois/controle-parlementaire-de-l-etat-d-urgence/controle-parlementaire-de-l-etat-d-urgence/donnees-de-synthese/ (13 October 2022).

[118] "France: abus commis dans le cadre de l'état d'urgence." Human Rights Watch Online. 3 February 2016. https://www.hrw.org/fr/news/2016/02/03/france-abus-commis-dans-le-cadre-de-letat-durgence.

still highly controversial, reflect the historical scale of the processes, which also reflect the nature of the security challenges of our time, which make the prospect of such drastically different legal orders from those of peacetime irrelevant on the continent today. The era of 'classic wars' may well be over, except in cases of extraterritorial crisis management and military challenges arising from alliance obligations, i.e. the importance of action against non-state actors in the face of openly inter-state armed conflict has been markedly reinforced, but the expectation of 'ossification' of stability in the Balkans and events in Russia and Ukraine still give us reason for scepticism. In that regard, the argument is not in itself overstated insofar as it is aimed at the fact that the military nature of the rules of law (not limited to the special legal order) of legal systems that have been operating in peace for almost a century is already partly being tested and partly cannot escape systemic and consistent review.

Taking stock of the historical development of the extraordinary presidential power itself, one might ask whether, without De Gaulle's character and his particular era, this special legal order is conceivable in France, which has basically always been unshakeable in its liberal tendencies, or whether the brand of "liberticide" has been seriously and permanently associated with the institution? Is it reasonable, in a system that is broadly formulated and subject to control beyond 30 days, to opt for Article 16 of the Constitution without the objectives it seeks to achieve going beyond the circumstances and objectives laid down in the state of emergency and the means legally provided for achieving them? In particular, it is worth considering not only the person of De Gaulle but also the historical and geopolitical situation of the country at the time, and the changes that have taken place since then in the legal situation of the overseas territories (which were often the scene of the events that gave rise to these measures), which, all things considered, make it not inconceivable that this legal order could become part of legal history.

Undoubtedly, the greatest path of legal development, inevitably created by the cornering effects of a security environment that was, for the most part, already rapidly changing face, was the state of emergency and the

law governing it: in the absence of constitutional safeguards, it entered into force in 1955, and was amended numerous times in the wake of events to make it more meaningful and applicable to the threats. The French legislator, with the anti-terrorist legislation and the package of laws known only as the 'anti-terrorist' act, took parts of it out of its 'exceptional' context and placed it in peacetime legislation. That is an acknowledgement that the verisimilitude of the promulgation of special legal order periods, as well as certain decades-old standards of normal state and social functioning, can be subject to renewal. Whether this could mean a perpetuation and generalisation of the conditions that gave rise to the state of emergency, or a permanent deterioration of our security environment and the permanent erosion of the rule of law and the democratic establishment, seems an exaggerated idea. It is the latter's task to defend its values in the face of these challenges, in the context of a set of values, the effectiveness of which is more of a testimony to its framework and the development of law.

The events in France have clearly shown that a series of events that could initially be experienced only as a state of emergency, following the restabilization of the state under a special legal order, can easily be identified as a challenge that does not require a drastic departure from peacetime rules for two years, which was perhaps criticisable in the opinion of the French. That recognition led to a desire a development of law, which in turn led to a necessary reform that saw the need to inevitably adapt certain exceptional provisions to a reasonable extent in order to preserve permanent protection and security - without regressing to a special legal order. A kind of resistance to terrorism has developed which, by transplanting special legal measures into peacetime, has succeeded in guaranteeing the security of life and property in such a way that the national security interest has led to restrictions on fundamental rights that are only necessary and focused on the most critical individuals. Such a renewal of the legal system is perhaps much more likely to guarantee the rule of law than a periodic declaration of a state of emergency and stubborn adherence to the experience and conditions of

previous decades. The inclusion of perspectivism has not been refuted before the time of writing the present study, and an important indicator of the declaration of a state of emergency has been closed for the time being. However, it should not be overlooked that these changes may require increased caution, a detailed analysis and even ex-post adjustments in the medium and long term.

6. Benelux and Denmark

In most Benelux countries with centuries-old and deep-rooted democratic traditions, special legal order is synonymous with threats of war (state of emergency), civil war (qualified state of emergency), or perhaps even disaster management (state of danger), and therefore less emphasis is placed on differentiating and delimiting the various types of special legal order and guaranteeing fundamental rights. Respect for constitutional procedures and fundamental rights is evident in the Benelux countries, which is why the number of special legal orders is low and their regulation less specific than in countries with a history of totalitarian regimes. In the constitutional monarchies of Belgium and Luxembourg, for example, it is the monarch that declares a state of emergency, and the king is also commander-in-chief of the army. The Luxembourg legislature, by a decision requiring a qualified majority, extends the powers of the Grand Duke, who is then also empowered to decide independently on the declaration of war and the conclusion of peace. The significance of this model is in that it is also followed in the case of catastrophes, law enforcement crisis, pandemics, and other threats (analogy). For reasons of similar history, democratic system and constitutional arrangements, it is practical to analye Denmark alongside the Benelux countries in the same chapter.

Due to the small number of special legal rules and the scarcity of legislation, it is advisable to analyse these countries from the point of view of normal legal rules and from the point of view of their – not always necessary – extension to meet special legal requirements.

Often, polycrisis under special jurisdictions puts the rule of law under serious pressure, with the risk of unnecessary centralisation, judicial activism, politicisation of courts and decisions that turn politics into justice or lack professionalism.[119] In the case of states with a strong democratic legacy, these were not borne out even during the SARS-CoV-2 coronavirus pandemic that caused the COVID-19 disease. While not all countries (e.g. Sweden) have adopted special legislation to deal with the pandemic, the effectiveness and efficiency of the measures should be evaluated. The effectiveness of exceptional measures, which act as litmus paper, can provide valuable feedback on the effectiveness of each country's epidemic management strategy and even on the organisation and functioning of the state. However, the absence of the introduction of a special legal order does not preclude the implementation of effective and targeted disease control measures; although the use of such measures has been a key determinant of effectiveness. States with strong democratic governance and mechanisms have clearly been successful in dealing with a pandemic as severe as COVID-19. The success of pandemic management depends not only on the professionalism of pandemic measures but also on their enforcement, which requires effective state institutions, clear powers, competent leaders, experts, effective communication, and the trust and discipline of citizens.[120]

6.1. Belgium

Belgium is a constitutional parliamentary monarchy and a federal state in which executive power is shared between the central and regional levels under the normal legal system. The "first minister" (head of government) is appointed by the King of Belgium from among the party(ies) that won a majority in the elections, who proposes the appointment of other

[119] BELOV, Martin, ed., Rule of Law in Crisis: Constitutionalism in a State of Flux, Routledge Research in Public Law (Abingdon, Oxon; New York, NY: Routledge, 2023).
[120] RAMBAREE, Komalsingh and NÄSSÉN, Nessica, "'The Swedish Strategy' to COVID-19 Pandemic: Impact on Vulnerable and Marginalised Communities," The International Journal of Community and Social Development 2, no. 2 (June 2020): 234-50, https://doi.org/10.1177/2516602620936048.

ministers. The appointment is limited to a maximum of fifteen members of government, with an equal number of Francophone and Flemish ministers. The government is composed of the First Minister, Ministers of Portfolio and Ministers without Portfolio.[121] The members of the government are not subordinated to the first minister but he or she chairs the cabinet meetings, which are usually held weekly. Ministers may also hold a parliamentary mandate. The Belgian administration is characterised by a high number of organisations under ministerial control.[122] In times of special legal order the role of the Council of State should be highlighted, which, unusually, has both advisory and judicial organisational features at the intersection of the legislative, executive and judicial branches of power. It also has the important task of suspending and repealing administrative acts (individual acts and decrees) that are contrary to the legislation in force and of playing an advisory role in matters relating to legislation and regulation.[123]

The Belgian constitution, which entered into force in 1831, does not contain any specific legal rules, what is more, it is stressed in a separate article[124] that the Belgian constitution may not be suspended as a whole or in part. The peculiar antagonistic nature of Belgian politics and the strong preference for legal instruments over mere political agreements explain why the functioning of government and many forms of intergovernmental relations have legal guarantees.[125] Certainly, that may not allow the Belgian State to operate and become vulnerable in situations beyond the normal rule of law, and therefore, under the provision of

[121] Chapter III of La Constitution Belge.
[122] BALÁZS, István, On the Changes in Public Administration in Hungary and Europe from the Change of Regime to the Present Day (Debrecen: Debreceni University Press, 2018), pp. 111-13.
[123] SZAMEL, Katalin – BALÁZS, István – GAJDUSCHEK, György – KOI, Gyula (eds.): Public Administration in the Member States of the European Union. Budapest, Wolters Kluwer Ltd., 2016.
[124] La Constitution Belge, Article 187.
[125] Johanne POIRIER, "Formal Mechanisms of Intergovernmental Relations in Belgium," Regional & Federal Studies 12, no. 3 (September 2002): 24-54, https://doi.org/10.1080/714004754.

Article 105 of the Constitution, the Belgian Parliament may delegate certain powers to the Government in such cases. Since the 1920s, Belgian constitutional law has provided for a mechanism known as "special powers" (*bijzondere machten, pouvoirs spéciaux*), which essentially involves a transfer of powers from Parliament to the Government. The delegation of powers may also be subject to conditions imposed by the legislature (e.g. reports or accounts). These typically include powers to repeal or amend (supplement) laws still in force.[126] The justification for the delegation of powers may be such cases where the parliamentary decision-making process would not be fast enough to deal operationally with emergency situations. The existence of an emergency situation – in addition to the reasonableness of operational decision-making – also justifies the temporary nature of emergency powers and the need for subsequent parliamentary ratification in the Constitution.[127] That is justified in cases where the decision taken by the government is originally essentially a matter of parliamentary competence. If that requirement is not fulfilled, the government's decision will be deemed invalid. Finally, citizens have the possibility to challenge the exceptional measures before the Council of State and the Belgian Constitutional Court.[128]

6.2. The Netherlands

Because of the parliamentary constitutional monarchy form of government and the constitutional arrangements, the Dutch king - although a member of the current government - practises no executive powers. The validity of any decrees he or she may issue requires the countersignature of a minister or a secretary of state. The Prime Minister's

[126] Jonas RIEMSLAGH: "Fighting COVID 19 - Legal Powers and Risks: Belgium", Verfassungsblog (blog), 25 March 2020, https://verfassungsblog.de/fighting-covid-19-legal-powers-and-risks-belgium/.
[127] "Légistique - Conseil d'État," goverment, 2020, http://www.raadvst-consetat.be/?page=technique_legislative&lang=fr.
[128] 'States of Emergency in Response to the Coronavirus Crisis: Situation in Certain Member States | Think Tank | European Parliament', European Parliamentary Research Service, 4 May 2020.
https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2020)649408.

role in government is that of the 'first among equals': although he or she decides on the government's agenda and on inter-ministerial competence disputes, ministers enjoy a high degree of autonomy. All ministers are individually accountable to the Dutch Parliament. The ministries are, naturally, headed by ministers, who are supported by appointed state secretaries attached to the government. Some 5,000 central offices and independent public administrations carry out specialised administrative tasks. As in Belgium, the Netherlands has a Council of State *(Raad van State):* it acts both as an independent advisory body to the legislative and executive branches and, since 1963, as the highest administrative forum (the Advisory Department, as the name suggests, advises the government and parliament on legislation and governance, while the Administrative Jurisdiction Department is the country's highest general administrative court).[129] The government is assisted by more than ten standing and ad hoc committees. Other noteworthy bodies include the Social and Economic Council, which makes recommendations to the government on matters covered by its name, and the Labour Fund, which is responsible for mediation between employers and employees.[130]

In the Netherlands, critical situations beyond normal legal order are handled in a specific way: on the one hand, municipalities play a decisive role, the army is only deployed in particularly justified cases and even then only in sub-regions, and in situations that constitute a special legal order (a good example of that is the recent direct involvement in slowing down the spread of the COVID-19 pandemic), the Dutch government does not necessarily take the initiative to declare a special legal order. The Dutch constitution recognises two different special legal orders: a general state of emergency *(algemene noodtoestand)*[131] and a limited state of emergency *(beperkte noodtoestand).*[132] The detailed rules for these are

[129] Articles 75 and 77 of the Dutch Constitution.
[130] BALÁZS, István: On the changes in public administration in Hungary and Europe from the regime change to the present day. Debrecen, Debrecen University Press, 2016, pp. 127-29.
[131] Article 96 of the Dutch Constitution.
[132] Article 103 of the Dutch Constitution.

laid down in laws[133] similar to Hungarian legislation. In contrast to domestic legislation, however, Dutch legislation does not differentiate with regard to the direction of the threat but rather the direction of expanding the government's decision-making centre, the extension of powers conferred on the armed forces and the parallel restriction of fundamental rights. Both forms of state of emergency are declared by decree of the King of the Netherlands and must be published in an official gazette to be valid.[134] A general state of emergency is in fact, introduces military administration, whereby the administration is run by the Dutch army and the government is given broad powers to mobilise the country's personnel and property. If the state of emergency is limited, the army is only given additional powers that enable them to carry out their tasks more effectively, particularly those of a disaster management or law enforcement nature (searching for missing persons, evacuation, law enforcement assistance, etc.). [135]

Two normal legal crisis situations (disaster and crisis) are regulated at statutory level, with significant differences in their centralised and decentralised approach and management methods. Accordingly, the management of disaster situations is rather the responsibility of local authorities, with the army only being given an intermediate role (saving lives, searching, providing transport capacity, etc.), while in crisis situations the response and recovery activities are carried out under government control. Disaster response is the responsibility of the mayor, who is appointed by the Minister of Interior and Justice and not elected, while the municipal body of representatives exercises some normative control. Unlike in Hungary, Dutch mayors are appointed rather than elected, and are therefore designated by the Municipal Act (Articles 177-179) as the persons responsible for coordinating disaster management, public order and public safety. Dutch mayors may thus adopt both an

[133] The Dutch War Rules Act 1996 (Oorlogswet voor Nederland) and the Exceptional Situations Act 1996 (Coördinatiewet uitzonderingstoestanden).
[134] Act of 1996 on the Rules for Exceptional Places Article 1 (1)-(3).
[135] Act on the Rules for Exceptional Places 1996, Article 1 paragraph (1).

administrative act, i.e. an emergency decision *(noodbevelen)* and a normative regulation *(noodverordeningen)* of general application in the municipality.[136]

If the mayor is no longer able to prevent or eliminate the threat, it becomes the responsibility of an organisation made up of the head of the security district and the district mayors *(bestuur van de veiligheidsregio)*.[137] It makes decisions by a majority vote, and its meetings are attended by the head of the region, the competent public prosecutor, and the (chief) water director, without voting rights.[138]

In slowing the spread of the COVID-19 pandemic, encouraging public cooperation and voluntary law abiding attitude has also played an important role in the successful management of the epidemic. In addition to emergency measures, health recommendations issued by the authorities (wearing masks, hygienic measures and keeping a distance) also played a role. Restrictions were put in place in most sectors, such as education, cultural and sporting events, resulting in online education, virtual events, and indoor sports activities. In applying those measures, the principles of proportionality and necessity have been respected as well as constitutional guarantees have been ensured. The authorities regularly communicated with the public on the reasons for the measures, their objectives and the details of their implementation. The flow of information and transparency were of paramount importance during the management of the epidemic, so that people could better understand and fully comply with the measures. The implementation of measures was monitored and supervised, and sanctions were put in place in case of non-compliance. Finally, the effectiveness of measures was regularly

[136] MARINKÁS, György: Special authorisation without the promulgation of a special legal order, or epidemic management in the Dutch way. In: NAGY, Zoltán – HORVÁTH, Attila (eds.): A special legal order and national regulatory models. Budapest, Mádl Ferenc Institute, 2021, p. 344.
[137] MARINKÁS, p. 345.
[138] MÁRINKÁS: ibid. NAGY, Zoltán and HORVÁTH, Attila, eds., Special Legal Order and its National Regulation Models, Mádl Ferenc Institute for Comparative Law (Mádl Ferenc Comparative Law Institute, 2021), 345, https://doi.org/10.47079/2021.nzha.kulon.4.

evaluated and monitored and, if necessary, modified in light of the evolution of the epidemiological situation and scientific data.[139]

6.3. Luxembourg

The Constitution of Luxembourg, which came into force on 17 October 1868, established Luxembourg as a hereditary constitutional monarchy. Legislative power – similarly to the Hungarian Parliament – is vested in a unicameral parliament *(Chambre de Députés)* of sixty members, elected every five years,. Another important body is the Council of State, which in Luxembourg gives its opinion on all bills and amendments to laws proposed by the government to parliament. It can raise an objection if the Council of State considers that a bill or any amendment to it contains provisions that are not in line with the Constitution, international treaties or EU rules.[140]

The Grand Duke is the head of state, a symbol of national unity and a guarantee of independence. He or she exercises executive power in accordance with the Constitution and the laws of the country. The executive power is therefore in the hands of the Grand Duke, who also appoints members of the government responsible to parliament. [141]

The judicial organisation is headed by the Supreme Court and Luxembourg has two courts of cassation.[142]

The country's history is full of special legal orders, especially in wartime: up to 1935, the Luxembourg government had taken 618 exceptional measures. During that period, the government made dominantly war-related decisions, about which it only informed Parliament. After the terrorist attack on the United States of America (2001), there was a heated debate on the elaboration of a more detailed special legal order, which

[139] Vanessa, TYZO: "States of Emergency in Response to the Coronavirus Crisis: Situation in Certain Member States III," 2020, 12.
[140] Luxembourg Constitution, Articles 50-75.
[141] Luxembourg Constitution, Articles 33-42.
[142] Luxembourg Constitution, Articles 91-92.

gained new momentum with the wave of terrorism in Western Europe in 2015. [143]

Despite the above progresses, the Grand Duchy of Luxembourg has not yet developed special legal rules and their constitutional regulation. A related provision is the right of the Grand Duke to decide on matters of war and peace, subject to an authorisation of the Chamber of Deputies.[144] According to the Luxembourg Constitution, the Grand Duke may take measures which may derogate from the laws in force in the event of an international crisis, a concrete and real threat to the vital interests of the whole or part of the country or an imminent threat of serious attacks on public security.[145] That is essentially equivalent to an *état de crise.* The grand duke's extraordinary measures *(règlements grand-ducaux)* must be necessary, appropriate and proportionate. The measures may be in force for a maximum of ten days, which may be extended by Parliament for a period of three months but not longer than the actual duration of the crisis.[146]

During the pandemic, one of the key aspects of the Luxembourg approach was to create a regulatory environment that generated a balance between the protection of public health (curfew restrictions, stand-off requirements of keeping distance, masking and closure of non-essential businesses) and the respect of individual rights (reasonable individual interests and judicial enforcement). The entire process of taking pandemic measures was transparent and state media proactively informed the public about the evolution of the pandemic, the objectives behind each measure and the scientific evidence supporting them. Regular press conferences and official media channels helped to maintain public confidence and ensure that decisions were based on reliable information.

[143] "States of Emergency in Response to the Coronavirus Crisis: Situation in Certain Member States III | Think Tank | European Parliament," goverment, Think Tank | European Parliament, 2020, 6-7, https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2020)651972.
[144] Luxembourg Constitution, Art. 37 paragraph (6).
[145] Article 32(4) of the Luxembourg Constitution.
[146] Article 32(4) of the Luxembourg Constitution.

Luxembourg's legal system played a crucial role in maintaining the rule of law even during the pandemic. Courts have played an important role in adjudicating disputes over the implementation of epidemic measures and protecting individual rights, providing a forum for individuals and businesses to challenge restrictions and pursue their reasonable interests through litigation. Luxembourg has also understood the importance of a whole-of-government approach in dealing with the pandemic. Collaboration between government institutions, health-care professionals as well as relevant and interested parties was key to the development and implementation of effective epidemiological decisions. That inclusive approach ensured that decisions were established, based on expertly advice and took into account the reasonable needs of the population. The government regularly reviewed and adapted its measures in the light of the changing situation and the latest scientific learnings. That dynamic approach has allowed a more targeted and effective response, while maintaining the rule of law.[147]

6.4. Denmark

Like the Benelux countries, Denmark is a parliamentary constitutional monarchy. Executive power is concentrated in the Council of State, chaired by the King,[148] and composed of the Prime Minister and her ministers. The ministers are politically and legally responsible for the ministries under their control. The Prime Minister sets the main directions of government policy, but the most important issues are discussed by the Cabinet. Matters of particular importance are often discussed by members of government in informal meetings. The work of the government is assisted by relatively few consultative bodies, and they mostly support the work of individual ministers directly. The role of committees is

[147] BELOV: Rule of Law in Crisis; VUKOVICH, Lilla – VYSOTSKAYA, Volha – NIENABER, Birte: Coronavirus Pandemic in the EU - Fundamental Rights Implications in Luxembourg, 2020, https://orbilu.uni.lu/handle/10993/44111.

[148] King Frederik X of Denmark ascended to the throne in January 2024, succeeding his mother, Queen Margrethe II, who officially abdicated after 52 years of reign.

especially important in Danish administration. These are consultative or merely advisory committees without decision-making powers.[149]

The Danish exceptional powers legislation is strikingly under-regulated compared to the Hungarian legislation, with few special legal rule situations, special legal regimes and restrictions on fundamental rights. Only one article (!) of the Danish Constitution contains special rules of law. According to Article 23 of the Danish Constitution (Grundloven), if the Parliament is unable to meet in an emergency, the King may take emergency measures with temporary effect. These measures must not be contrary to the Danish Constitution and the Parliament *(Folketing)* must decide at the earliest possible session whether to maintain or repeal them.

The unusual constitutional under-regulation of special legal order caused a surprise at the outbreak of the COVID-19 pandemic, as the lack of properly chiselled legislation was a serious handicap in taking lawful, operational and justifiable restrictive epidemiological measures. Exceptional measures, which had been elaborated in detail and discussed in depth, were maintained in force even in March 2021 and ended up containing measures similar to the Hungarian legislation in a number of provisions (e.g. restrictions on freedom of assembly, restrictions of the authorities).

As under-regulated as Danish special legal order is, the more regulated is the issue of fundamental rights, which is dealt with in an entire chapter of the constitution[150]. The unavoidable pandemic restrictive measures were therefore legitimised not in the direction of regulation beyond normal legal order but in the direction of fundamental rights and their reasonable restriction. The nine fundamental rights listed in the Constitution cannot be restricted unless they are necessary to be restricted by law in the public interest. These are personal liberty, the right to housing, the right to property, the right to trade, the right to work, the right to free public

[149] BALÁZS, István: ibid., On the Changes in Public Administration in Hungary and Europe from the Change of Regime to the Present, pp. 113-115.
[150] Chapter VIII of the Danish Constitution.

education, freedom of speech, freedom of assembly and freedom of association.[151]

The legal basis for pandemic measures is provided by the 2019 Act on the Management of Epidemics on Measures against Infectious and Other Diseases[152]. Prior to the outbreak of the COVID-19 pandemic, this law delegated broad powers to five regional epidemiological commissions. The committees were composed of representatives from the police, disaster management, health-care authorities, as well as municipalities. Their decisions concerned the restriction of public gatherings, quarantine and the details of COVID control. As the epidemic became intensified, the government initiated a number of amendments to the text of the lawwith the aim of transferring certain decision-making powers from the regional commissions to the government. For example, one of the amendments allowed the Minister of Health to order an isolation of persons suspected of being infected and ban gatherings and events with more than 100 people on 17 March 2020.[153]

The Danish Parliament has a major role in the emergency measures system. In the immediate aftermath of the outbreak, a series of laws were adopted by unanimous vote in an accelerated procedure. These allow for a flexible entry into force, amendment and repeal of pandemic measures. However, bills that introduced or allowed substantial restrictions on fundamental rights were usually voted down. That was the fate of a government proposal to allow police to enter private homes in the event of suspected infection. The proposal was rejected and police officers are currently only able to do so with a court order. The Danish legislature has set up a special committee with the sole task of evaluating the government's epidemiological measures.[154]

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[151] Articles 71-79 of the Danish Constitution.

[152] Sundhedsministeriet: Bekendtgørelse Af Lov Om Foranstaltninger Mod Smitsomme Og Andre Overførbare Sygdomme, LBK nr 1026 af 01/10/2019 § (2019), https://www.retsinformation.dk/eli/lta/2019/1026.

[153] "States of Emergency in Response to the Coronavirus Crisis," 2020, 3-4.

[154] "States of Emergency in Response to the Coronavirus Crisis," 2020, 4.

As a result of pandemic measures, this Scandinavian country of 5.8 million people has survived the COVID-19 epidemic with relatively low infection and mortality rates. Denmark was one of the first European countries to lift pandemic restrictions. The government's rapid response, the high level of trust Danish citizens have in each other and the government, as well as the importance of social heritage, have all contributed to an effective management of the coronavirus crisis.[155]

7. Special legal order of the Republic of Estonia

In many respects, Estonia can serve as a model state in the reform of domestic defence regulation, since following the Russian cyber attacks on the country in 2007, it made significant infrastructure investments - with NATO's help - to secure the cyberspace and related technologies as well as to ensure national security, with a strong emphasis on scientific background work. In addition, their historical experience over the past 100 years is similar to that of the Hungarian state, having become part of the Soviet Union in the 1940s after a brief period of independence and thus having first-hand experience of a totalitarian regime that also defined the functioning of our country.

It is of interest to the subject of our study that Estonia, almost immediately after declaring its independence from the Russian Empire on 24 February 1918, made use of the special legal system because of the communist threat. Their special legal order law, which was the most determining in the inter-war period, was adopted in 1930. It was not long before the government of Jaan Tönisson imposed a state of emergency in the city and county of Tartu in the summer of 1933 because of the far-right Union of Participants in the Estonian War of Independence movement (or War of Independence veterans' movement). That special

[155] David OLAGNIER and Trine H. MOGENSEN, The Covid-19 Pandemic in Denmark: Big Lessons from a Small Country, Cytokine & Growth Factor Reviews 53 (2020): 10-12, https://doi.org/10.1016/j.cytogfr.2020.05.005.

legal order soon became nationwide and lasted until October of the same year, when a constitutional amendment initiated by the veteran militant movement was voted through by a population tired of political fighting and the Tönisson cabinet resigned. However, the political rise of the far-right militant organisation threatened the constitutional regime, and as part of a coup led by Prime Minister Konstantin Päts, a state of emergency was again imposed on 12 March 1934, with wide-ranging restrictions including control of the press, a ban on political movements and rallies, and the arrest of many members of the Union of Participants in the Estonian War of Independence. In 1938, in addition to the new constitution, a new emergency law was passed in April 1938 by the Päts-led government, which made the use of power essentially presidential discretionary and was used mainly to maintain internal order. That situation continued to exist until the annexation to the Soviet Union. The shortcomings of the law and the tools it provided were later used and exploited also by the government appointed by the Soviet Union in its early period.[156]

The Republic of Estonia has shaped its existing legislation by learning from both its early history and the challenges of today. Its preparedness and approach to security is well demonstrated by the fact that the State's security system is dealt with separately on the website of the legislation (Riigikogu). In doing so, they claim that the state must be constantly prepared for danger, which must be systematically prepared for, on the one hand, by means of risk analysis and, on the basis of that experience, emergency legislation and plans. The latter are drawn up by local, regional and central crisis committees (the latter under the leadership of the Ministry of the Interior), which are responsible for coordinating crisis

[156] KENKMANN, Peeter: "Universal Means of Governance": the State of National Emergency in the Republic of Estonia in 1938-1940. Tuna, 2018/1 (https://www.ra.ee/tuna/en/universal-means-of-governance-the-state-of-national-emergency-in-the-republic-of-estonia-in-1938-1940/).

prevention and preparedness work but not for coordinating emergency response itself. [157]

The Estonian special legal order has three poles. The constitution itself distinguishes two special legal regimes - martial law and state of emergency,[158] but a state of danger[159] is also part of the legal system. The detailed rules for each of these three situations are laid down in a separate act.

7.1. Specific legal situations and the rules for their establishment

The Constitution divides the state of war into two sub-cases. The first is when a special legal order is introduced for the fulfilment of an international obligation, or when mobilisation is ordered because of a threat of external aggression. This is initiated by the President of the Republic and decided by the Riigikogu. In the other case, when the Republic of Estonia is under external attack, the President of the Republic may impose martial law and appoint the Commander-in-Chief of Defence Forces at his own discretion. The latter is specifically mentioned in the Constitution because it separates the peacetime and wartime defence organisations, which are provided for by separate legislation, and names the commander of the army's peacetime and wartime defence separately.[160]

The detailed rules for the declaration of a state of emergency are already laid down in the Emergency Powers Act. That is authorised by Article 129 of the Constitution, which also specifies the basic condition that an emergency may be declared if some threat to the constitutional order of Estonia cannot be averted without it.[161] Section 2(3) of the Act states that

[157] National defence hazards (https://www.eesti.ee/en/security-and-defence/safety-and-security/national-defence-hazards#emergency-situation).
[158] Constitution of Estonia (https://www.eesti.ee/en/republic-of-estonia/constitution-of-the-republic-of-estonia/chapter-x-national-defence). Chapter 10 Defence.
[159] Emergency Act (https://www.riigiteataja.ee/en/eli/ee/528062021002/consolide/current).
[160] Constitution of Estonia Section 126-128.
[161] Constitution of Estonia Section 129.

a state of emergency shall be declared by the Riigikogu, i.e. the legislature, on the initiative of the President of the Republic or the Government. Section 3 of the Emergency Powers Act outlines the constitutional reversal that threatens constitutional order. It stipulates that attempts to violently overthrow the constitutional order of Estonia, terrorist activities, mass coercion involving violence, any widespread conflict between groups of persons involving violence, a forceful isolation of any territory of the Republic of Estonia and persistent mass disorder involving violence shall be regarded as such.[162] In such cases, the President of the Republic or the Government shall submit a written proposal to the Legislature. A state of emergency may be declared for a maximum period of 3 months. It is important to note that in the event of a state of emergency, the armed forces may be applied, on a proposal from the Government and with the approval of the President of the Republic, to prevent and stop an attack on a public authority or a military object, to control violent groups or to protect the territorial integrity of the Republic of Estonia. A restriction of the use of force is that it is possible only if the authorities entrusted with it are unable to perform their duties on time or at all. In the event that the state of emergency results in a conflict that establishes the conditions for the declaration of a state of war, the state of emergency shall be terminated upon its declaration.[163]

The Emergency Act defines the concept of an emergency. Accordingly an emergency is *"an event or chain of events or an interruption of essential services that endangers the life or health of a large number of people, causes substantial damage to property, significant environmental damage or serious and widespread disruption of essential services, and whose resolution requires the immediate coordinated action of several authorities or their agents, the use of a different management organisation from the usual one, and the involvement of more persons*

[162] Emergency Situations Act (Emergency Situations Act) Section 3.
[163] Articles 12-16 of the Emergency Powers Act.

and resources than usual."[164] The government may declare an emergency by issuing a decree in the event of a natural disaster, disaster or contagious disease if the measures provided by law are necessary. By disaster, the legislator means hazards of an industrial nature. A state of emergency may be declared for the whole territory of the country or a specific part of it. [165]

7.2. Specialised bodies of a special legal order

In essence, both the government and the president of the republic are central actors in a special legal order. In the event of a state of war, the Head of State may even order the application of special legal order at his or her own discretion, and in the event of a state of emergency, he takes the initiative. The government is a central actor in all types of special legal order, as it is the body most responsible for dealing with any emergency situations. The Prime Minister is the person responsible for managing the emergency in both states of emergency and state of war, with the Minister of the Interior responsible for internal security. In a state of war, the central figure is the commander of the Estonian Defence Forces, who is authorised to make administrative decisions and issue orders, as well as has the more important power to conclude or order the termination of a ceasefire, or to disregard government orders and decrees, ministerial decisions, municipals and city councils, as well as municipalities, if they actually and directly impede national defence.[166]

But we also encounter specialised bodies. The Defence Council is already mentioned in the Constitution as an advisory body to the President of the Republic.[167] Its members are the Speaker of the Parliament, the Prime Minister, the Chairman of the Defence and Foreign Affairs Committees of the Riigikogu, the Foreign Minister, the Minister of Defence, the Minister of Finance, the Minister of the Interior, the Minister of

[164] Emergency Act (Hädaolukorra seadus). 2 (1).
[165] Emergency Law Section 19-23.
[166] Article 45 of the Defence Act.
[167] Constitution of Estonia Section 127 (2).

Economy, the Minister of Justice and the Commander-in-Chief of the Defence Forces.[168] Before a state of emergency is declared, it has an important role in giving an opinion on issues requiring an immediate solution, including the negotiations between the government and the peace-breakers that could lead to the avoidance of a state of emergency, and the use of military force.[169]

A special body is the Government Security Committee, which coordinates the activities of the executive branch aimed at planning, developing and organising national defence. According to the law regulating the Commission, this body *"coordinates the activities of the security authorities, analyses and assesses the security situation in the State, determines the State's needs for security-related information, and performs other functions as provided by law."*[170]

The Emergency Act provides for the establishment of a Government Crisis Committee, along with four regional crisis committees and local crisis committees. The work of the central body is coordinated by the Ministry of the Interior. It is responsible for risk assessment, emergency planning, emergency prevention and emergency preparedness.[171]

7.3. Constitutional guarantees in a special legal order

Article 130 of the Constitution, while stating that fundamental rights and freedoms may be restricted in times of special law and order in the interests of national security and public order, and that obligations may be imposed to promote the protection of the same interests, then goes on to provide a broad list of fundamental rights for which derogation is not permitted. In doing so, it states that the clause in Article 11 of the Constitution may not be affected by a restriction on fundamental rights,

[168] https://president.ee/en/president/institutions/36.
[169] Article 11 of the Emergency Powers Act
[170] DORNFELD, László: Gradualism and comprehensive protection: the special legal order in Estonia. NAGY, Zoltán – HORVÁTH, Attila (eds.): Special legal order and national regulatory models. Budapest, Mádl Ferenc Institute, 2021, p. 286.
[171] Emergency Law, Articles 4-7.

i.e. restrictions on fundamental rights may only be made in accordance with the Constitution. That would prevent the application of a restriction of a fundamental right in a time of emergency in such manner which is incompatible with the principles of the Constitution, even if the derogation of the fundamental right in question was otherwise permitted by a constitutional mandate itself. In addition, it does not allow, inter alia, restrictions on pre-existing nationality or its acquisition by birth, habeas corpus, presumption of innocence, publicity of trial, equality before the law and non-discrimination, right of access to a court, prohibition of torture, cruel, inhuman or degrading treatment, nullum crimen sine lege, nulla poena sine lege, right to trial. [172]

Article 131 of the Constitution also contains an electoral clause, which states that during a period of special law and order, members of the legislature, i.e. the Riigikogu, the President of the Republic and members of local governments, cannot be elected or have their mandate terminated. Their mandate may be terminated if it ceases to exist during the period of special legal order or if it ceases to exist within three months of the termination of special legal order. In these cases, elections would have to be held within three months of the end of special legal order.[173]

The Estonian special legal order system as a whole reflects modern security challenges and provides a graduated mandate in the event of either internal crises or the possibility or existence of an external attack. Their established peacetime system is constantly striving to provide adequate responses to the challenges of emergency times and has thus built up a highly complex but well-constructed special jurisdiction system.

[172] Constitution of Estonia, Article 130.
[173] Constitution of Estonia, Article 131.

8. Some Anglo-Saxon special rules of law - models of general authorisation

In the following, we will focus on the basic powers in the written and unwritten constitutions of the countries under study, the legislation and emergency provisions in legislation to deal with special situations, as well as the organisations dealing with a comprehensive - not exclusively military - management of crises. Through the constitutional framework and the terms of reference and mandates of crisis management organisations, we can build up a picture of the statics and dynamics of the 'immune system' of a given state.

The exceptional system of power regulation and the constitutional thinking of Anglo-Saxon constitutional states give a specific image of their special legal order. The common law constitutional system of Anglo-Saxon countries is more traditional than the legal systems of continental Europe in general. The United Kingdom, with its unwritten constitution, is perhaps the most specific of the countries discussed. Canada, through the legal tradition of the Commonwealth, continues to regard the English monarch as the head of state, but in practice, the prerogatives of supremacy enshrined in its written constitution are exercised by the Governor-General, who is put forward for appointment by the Prime Minister. The United States of America adopted its Constitution in 1787 following its successful War of Independence, so although the basic concepts of its legal system derive from the common law, its main institutions were shaped by a unique trajectory.

An important common feature of these countries is that their constitutions lack or rarely contain any special legal order provisions found in continental legal systems, such as Hungary. The individual constitutions usually assign an entity who is entitled to lead the army or to start a war, but beyond that there are no detailed rules of law, elaborate procedures or institutional guarantees. It is typical that the exercise of "emergency powers" is rather laid down in one or more specific laws. This so-called monist solution can also lead to casuality, as we will see in the case of the

US, where a total of 136 national emergency powers are listed[174] but do not necessarily require complex public law procedures, unlike the dichotomous models more typically used in Europe.[175]

'Martial law' is also a special common law term (martial law - martial rule, military administration), which can typically be introduced in one's own territory and whose application has set important precedents of formative and legal historical importance (e.g. in the US the Ex parte Milligan case). [176]

8.1. The United Kingdom

The provisions relating to a state of emergency are set out in the Civil Contingencies Act 2004 (CCA), which consolidates the previous separate body of legislation into a single Act. It merged the 1920 Emergency Power Act, the wartime empowering legislation, the former 1948 Civil Defence Act and the 1950 Civil Defence Act for Northern Ireland, and the 1986 Civil Protection in Peacetime Act supplementing them. Also important is the Emergency Powers Act 1964, the provisions of which have been partly superseded by the CCA but the rules still in force allow for the use of the military in an emergency, including agricultural or other works of national importance.[177]

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[174] Brennan Center for Justice: A Guide to Emergency Powers and Their Use, p. 3, New York University School of Law, 2019. *https://www.brennancenter.org/sites/default/files/2019-10/2019_10_15_EmergencyPowersFULL.pdf*

[175] Gábor MÉSZÁROS: The American model of the "unregulated" exceptional state: a fallacy or an example to follow? Fundamentum, 2016, No. 2-4, p. 37. http://epa.*oszk.hu/02300/02334/00071/pdf/EPA02334_fundamentum_2016_02-04_037-055.pdf*

[176] Gábor MÉSZÁROS: Special Situations and Intervention Options in Constitutional Democracies, p. 102-107, PhD thesis, University of Debrecen *https://dea.lib.unideb.hu/dea/bitstream/handle/2437/237870/Meszaros_Gabor_PhD_ertekezes_20117_titkositott.pdf?sequence=5&isAllowed=y*

[177] The lack of labour from Eastern Europe in agriculture, partly due to Brexit and partly due to the epidemic, gives this legal option a sad topicality. *https://www.independent.co.uk/news/uk/home-news/prince-charles-pick-for-britain-fruit-veg-video-royal-family-a9521516.html*

The law is essentially based on the principle that Parliament should be able to carry out any legislative task, with special provisions only being issued in cases where delay would pose too great a risk, the existing regulatory framework is not applicable or it cannot be determined whether it is applicable.

A state of emergency can be declared by the monarch, but in practice, it is done on the proposal of the head of government and does not require parliamentary approval. Parliament is also immediately notified of declaration of a state of emergency , which, if not in session, meets within five days (Article 28). In a state of emergency, the Government is also empowered to regulate by decree matters which would otherwise be regulated by an act but it must submit them to Parliament for approval within seven days at the latest, failing which the provisions lapse (Article 27).[178]

The Act is made up of three main parts and annexes. Part I deals with local and municipal civil protection measures and arrangements as well as defines the meaning of emergency. It is worth noting that civil protection tasks are dealt with separately in the planning part, which also deals with exercises. This part mainly gives ministerial powers and does not provide for legislation.

In Part II, Article 19 deals with emergency powers of national importance and also starts with a definition of an emergency, which can be

- an event or situation which threatens to cause serious harm to the well-being of people in the UK or in a part or region of the UK,
- an event or situation which threatens serious damage to the environment in the UK or a part or region of the UK,

[178] Representatives' Information Service: powers of government and parliamentary control in the event of a state of emergency in the Member States of the European Union, p. 11., Parliament's Office 2016.
https://www.parlament.hu/documents/10181/709209/8_Rendkivuli_allapot_kormanyjogkorok_EU.pdf/916ffa9d-7d86-48fa-a2a0-277da6190198

- war or terrorism, which could threatens serious damage to the security of the UK.

Article 20 unpacks the power to make emergency regulations, leaving it to the Queen and, in urgent cases, to the Prime Minister and senior ministers.

Article 21 sets out the conditions for emergency regulations: the emergency has occurred, is in progress or is imminent; the regulation is necessary to prevent, control or mitigate an aspect or effect of the emergency; the regulation must be urgent.

Article 22 sets out the possible subjects of regulation and possible measures, and Article 23 sets out the limits of regulations. The most important of these is that emergency rules may not amend the provisions of the Human Rights Act (1998) or Part Two of the CCA.

The final Part III contains general provisions, and the annexes list the persons and organisations defined and authorised by the Act, such as local authorities, health care providers, specialised authorities and service providers, to whom and which the Act refers in connection with the specific tasks, powers and authorisations.

According to the Government's Open Concept of Operations[179], intervention and incident management in various emergencies is primarily the responsibility of the services providing the basic tasking, with more complex situations being managed by the Strategic Co-ordinating Group. In higher level emergencies, central government is involved in three levels of intervention through the COBR[180] (Cabinet Office Briefing Rooms) system. The last of the major catastrophic levels is the level of large-scale natural disasters and industrial emergencies comparable to Chornobyl, where the Prime Minister is now in charge of response in all cases.

[179] *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/192425/CONOPs_incl_revised_chapter_24_Apr-13.pdf*
[180] *https://www.instituteforgovernment.org.uk/explainers/cobr-cobra*

Critical infrastructure protection at the national level is handled by the CPNI (Centre for the Protection of National Infrastructure)[181] under MI5, the UK's domestic intelligence service, whose activities are largely guided by the National Security Strategy[182], the National Risk Register[183] and the Counter-Terrorism Strategy[184].

Another important asset is the existence of a guide for planning the coordination of work by spontaneous volunteers[185] and a responsibility map[186] of the organisations responsible for different types of emergencies.

8.2. Canada

Under section 15 of the Constitution Act 1982[187], which sets out the constitutional framework for Canada, the Queen is the Commander-in-Chief of the land and naval militia as well as of all naval and land military forces.

Until 1988, special legislation powers in Canada were governed by the War Measures Act (1914), which was applied in practice three times in the First and Second World Wars and during the October Crisis of 1970. On 5 October, the Front de libération du Québec (FLQ) kidnapped British Trade Commissioner James Cross from his home, followed five days later by the Quebec Minister of Labour, Pierre Laporte, who was later murdered on 17 October. The current Canadian Prime Minister's father, Pierre Trudeau, then implemented the War Measures Act, which gave the

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[181] *https://www.cpni.gov.uk/who-we-are*

[182] *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/478933/52309_Cm_9161_NSS_SD_Review_web_only.pdf*

[183] *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952959/6.6920_CO_CCS_s_National_Risk_Register_2020_11-1-21-FINAL.pdf*

[184] *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716907/140618_CCS207_CCS0218929798-1_CONTEST_3.0_WEB.pdf*

[185] *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/828201/20190722-Planning-the-coordination-of-spontaneous-volunteers-in-emergencies_Final.pdf*

[186] *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/61354/lead-government-department-march-2010.pdf*

[187] *https://laws-lois.justice.gc.ca/eng/const/page-1.html#h-3*

authorities broader powers of arrest and detention without trial. Five FLQ terrorists were flown to Cuba in 1970 as part of a deal to exchange the life of James Cross but all were eventually arrested.[188]

Since 1988, the federal government may declare a national state of emergency under the Emergencies Act (1988). The state of emergency automatically ends after a certain period of time unless extended by the Governor-in-Council. There are four types of emergency regulated: public welfare emergency (Part I), public order emergency (Part II), international emergency (Part III) and state of war emergency (Part IV).

According to Article 3 of the Act, the main category is national emergency, defined as an urgent and critical situation of a temporary nature, which

- poses a serious threat to the lives, health or safety of Canadians and is of a magnitude or nature that exceeds the province's jurisdiction or capacity to address it, or
- seriously threatens the ability of the Government of Canada to protect Canada's sovereignty, security and territorial integrity and cannot be addressed under Canada's normal legal regime.

According to Article 5, a public welfare emergency is a threat that is or may be caused by or may result in real or imminent (a) fire, flood, drought, storm, earthquake or other natural phenomenon, (b) human, animal or plant disease, epidemic, or (c) accident or pollution and endanger life or property, cause social disruption or disruption of the flow of essential goods, services, and resources and is of such magnitude as to constitute a national emergency. Such an order shall have a 90-day statute of limitations but may be extended.

Under Article 16, a public order emergency is an emergency arising from threats to the security of Canada and of such significance as to constitute

[188] https://www.cbc.ca/history/EPISCONTENTSE1EP16CH1PA4LE.html.

a national emergency. This type of order has a default duration of 30 days but may be extended.

An international emergency, as defined in Article 27, is an emergency involving Canada in which one or more other countries are involved and which involves threats, coercion or actual or imminent use of force or violence that rises to the level of a national emergency. Such a regulator has a default period of 60 days but may be extended.

Finally, Article 37 contains a definition of a state of war emergency, which is a war or other armed conflict that is actual or imminent, affects Canada or any of its allies, and is of such significance that it rises to the level of a national emergency. Such a regulation has a default term of 120 days but may be extended.

Parliamentary supervision, revocation and extension of emergency provisions are provided for in Part VI, Articles 58-60.

An emergency can be declared at the provincial and municipal levels. On 9 April 2020, Prime Minister Justin Trudeau sent a letter to provincial premiers calling for the law to be applied in the wake of the coronavirus outbreak (consultation was required by law) but it was not ultimately done.

Canadian crisis management[189] is defined by shared responsibility, coordination, and communication at all levels of government. Local, provincial and central government all respond to emergencies at their respective levels of responsibility, competence and capability. At governmental level, the primary host for that activity is the Minister of Public Safety Canada, which conducts the response through the Government Operations Centre. The Ministry also has regional offices, which in the event of an incident also serve as provincial operations centres. Their activities include situation monitoring, risk analysis, planning, logistics and information.

[189] https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ntnl-rspns-sstm/ntnl-rspns-sstm-eng.pdf.

8.3. The United States of America

The Constitution of the United States of America[190] does not contain explicit specific legal order provisions. Congress has the power to suspend habeas corpus, thereby allowing detention without trial, in case of insurrection, invasion, or when the public safety so requires, and call out the armed forces ("militias") to suppress insurrections or repel invasions (Article I. Section 8, 15.). As head of the executive branch, the President's special powers of law are derived from the Enabling Clause (Article II. Section 1, 1.), the Provision Clause (Article II. Section 3.), the Oath Clause (Article II, Section 1, 8.) and the appointment as commander-in-chief (Article II. Section 2, 1.), treating them as implied rights.[191] This was also invoked by President Roosevelt when interning citizens of Japanese ancestry, or by Lincoln when suspending habeas corpus during the Civil War.[192]

Given the conflicts that were taking place starting from the second half of the twentieth century, it may seem rather strange that the last time the United States declared war on our country, along with Bulgaria and Romania, was on 5 June 1942. This is a congressional power (Article I. Section 8, 11), and since then US troops were sent by each president to carry out their duties without a formal declaration of war.[193]

The concept of the suspension of habeas corpus is also closely linked to the institution of martial law, under which a specific area of a country is placed under military administration. Its introduction at member state level is the prerogative of the governors and had been done on several occasions, typically with the assistance of National Guard units (e.g., the Chicago fire of 1871, San Francisco earthquake of 1906, Lexington riots of 1920, or the Cambridge protests of 1963). The domestic use of US

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[190] *https://constitutionus.com/*

[191] Justin DEPLATO: American Presidential Power and the War on Terror, Palgrave MacMillan 2015, p. 28.

[192] *https://www.theatlantic.com/magazine/archive/2019/01/presidential-emergency-powers/576418/*

[193] *https://history.house.gov/Institution/Origins-Development/War-Powers/*

forces has in principle been subject to congressional approval since 1878 by the Posse Comitatus Act but there are, of course, several exceptions to that rule[194], such as the use of National Guard units under the jurisdiction of a Member State, forces for counter-narcotics operations, or even the involvement of military lawyers in investigations.

Presidential acts can, certainly, also be subject to judicial review, and the Supreme Court shaped this area of law with decisions in a number of cases (e.g., ex parte Milligan, Korematsu v. U.S.). Until the National Emergencies Act of 1976[195] (hereafter NEA), special presidential powers could be traced back to minor laws passed in a number of areas, and the new legislation attempted to give them a uniform procedural form - since then, as it is known - with little success.

Article 201 of the NEA vests in the President the power to declare a national emergency, without creating a separate umbrella definition. Article 202 provides for the termination of a declared state of emergency, which, in addition to the President, is evidently also empowered by Congress. Importantly, Congress is required by law to vote to extend a state of emergency within 6 months of its imposition, and more importantly, since the law has been in force, the legislature has not once (!) met on such a subject, even though there are currently 34 states of emergency in force[196], some of which (e.g., certain sanctions against Iran) have been in place for decades.

According to a summary of emergency powers produced by the Brennan Center for Justiceat New York University[197], there are currently 136 such powers in US law, 13 of which require only a declaration of a national emergency by Congress, the rest require only an executive order and signature by the President. Authorisations have been granted sporadically and in very different areas of law. In addition to the obvious military,

194 *https://www.rand.org/content/dam/rand/pubs/monograph_reports/MR1251/MR1251.AppD.pdf*

195 *https://www.govtrack.us/congress/bills/94/hr3884/text*

196 *https://en.wikipedia.org/wiki/List_of_national_emergencies_in_the_United_States*

197 See Brennan Guide

health, and criminal law spheres, there are also those in property law, commercial regulations, agriculture, communications, and transport laws.

Some of them can involve very serious interventions. There is, for example, a provision in force that gives the President the power to suspend the prohibition on testing chemical or biological agents on unknowing subjects. Under the Communications Act of 1934, the President has the power to take over or shut down radio stations. That provision is particularly important because, in the Internet age, US government lawyers are seeking to derive from it the power of the president to block or take control of certain Internet services - obviously causing headaches for the biggest tech companies. A commonly used tool is the International Emergency Economic Powers Act (IEEPA), which allows the seizure of any financial asset or freezing of a transaction involving a foreign person, even if it is the property of a US citizen and the transaction is between Americans.

Although, in theory, emergencies should typically be temporary, 34 of the 62 emergencies declared since the adoption of the NEA were in force on 4 September 2019, and the average duration of declared emergencies is 9.6 years.

The primary governmental center for crisis management at the federal level, the Department of Homeland Security (DHS), was established under the Homeland Security Act of 2002, effective March 1, 2003.[198]

According to Section 101 of the act establishing the organisation[199] , its mission is to

- prevent terrorist attacks within the United States;
- reduce the country's vulnerability to terrorism;
- minimise the damage caused by terrorist attacks and help recovery;

[198] *https://www.dhs.gov/creation-department-homeland-security*
[199] https://www.dhs.gov/sites/default/files/publications/hr_5005_enr.pdf

- carry out all its statutory functions and powers, acting as the lead government actor in natural and man-made crises and emergency planning;
- ensure that functions that are not essential for ensuring homeland security are also performed, unless otherwise provided by law;
- ensure that the interests of the national economy are not harmed in the pursuit of national security;
- monitor the links between illicit drug trafficking and terrorism and coordinate efforts to disrupt them.

DHS includes 22 federal-level organizations, including the Secret Service and the some branches of the armed forces (Coast Guard). Two of these are worth mentioning specifically for emergency management purposes.

The Federal Emergency Management Agency (FEMA) is a special federal agency created by President Carter in 1979 to provide civil protection and emergency management. Several times, often following a major natural disaster, through reactive legislation, amending its regulatory background and broadening the scope of its authority, in the Post-Katrina Emergency Management Reform Act of 2006, passed after Hurricane Katrina, Congress designated FEMA as the number one advisor to the President, the Secretary of Homeland Security, and the Secretary of State on all emergency management issues in the United States. Perhaps as a result, FEMA's strategy for 2022-2026 is to take on the impacts of climate change and build resilience[200] .

The rising significance of cyber security is illustrated by the emergence of another major organisation in the Department of Homeland Security portfolio. Established in 2018, the Cybersecurity and Infrastructure Security Agency (CISA)[201] is tasked with leading national efforts to understand, address and mitigate threats to cyber and physical infrastructure. They support the efforts of various industry and

[200] *https://www.fema.gov/sites/default/files/documents/fema_2022-2026-strategic-plan.pdf*
[201] https://www.cisa.gov/about-cisa.

government stakeholders by connecting them and providing them with resources, analysis as well as resilience-building tools to increase their resilience. CISA is responsible for coordinating cybersecurity activities at the federal level, working closely with the Office of Management and Budget.

8.4. Conclusions regarding the Anglo-Saxon special legal order systems

By continental legal standards, a somewhat sporadic, case-by-case approach to special legal order that is characteristic of Anglo-Saxon legal systems may also bring advantages in certain situations compared to the more common, written and well-defined systems in Europe, which are more commonly found in written constitutions. For one thing, these solutions are generally the result of organic legal development, the product of specific historical situations, which can serve as a model not only in legal but also in political terms, thus even establishing social acceptability, legitimacy and justification of a decision taken in an emergency. The other advantage of less rock-solid solutions is that they can make the calculations of a potential adversarial state or non-state actor more difficult, making a state's response in hybrid situations more difficult to predict.

In the Anglo-Saxon countries, as in continental federal states, a kind of subsidiarity is characteristic of crisis resolution in a sense that action beyond state borders is typically retained at the federal level, and problems of a "local" (provincial, national, etc.) scale are not typically raised, except when the resources required, the criticality of the situation, justify it. Fragmentation can also be envisaged at the federal level, as exemplified by the system of regional commands introduced by a global presence of US armed forces, which manage the armed forces deployed in different parts of the world between the Pentagon and the operational level as a strategic level (EUCOM, CENTCOM, AFRICOM, etc.)

9. Asian models for special legal order regulation

In his excellent book on Asian legal cultures, János Jány says: *"The timeliness of the venture hardly needs much explanation, as it is well known that the global importance of Asian countries is growing year by year. Although these successes are generally approached from an economic perspective, complemented by a political dimension in the event of conflict, the picture is not only incomplete but also distorted, as it lacks explanatory power... social structures are rooted in legal traditions, while law is itself the result of social perceptions. This creates an inextricable link between social system and legal tradition..."*[202] This chapter could also serve as a chalkboard for a deeper explanation of the successes of Asian states in dealing with the law in times of emergency. On the other hand, these legal cultures can also provide a regulatory template that can advance our own legislation.

9.1. India

The Constitution of India was adopted by the Constituent Assembly in 1949 as the highest source of state law, the longest written constitution in the world. The constitution is a major break with the nature of the previous century's social order, and its legal development has taken it far from the influences of the British colonial period. Its character echoes the constitutional ideas of many states (Canada, the Soviet Union, the Weimar Constitution, etc.).[203]

The framework of special legal order rules, which differ from the normal operation of law at the time, is provided for in Articles 352 to 360 of the

[202] JÁNY, János: Legal cultures in Asia - Cultural history, jurisprudence, everyday life. Budapest, Typotex, 2016, p. 11.
[203] "Introduction to Constitution of India". Ministry of Law and Justice of India. 29 July 2008. online: *http:*//indiacode.nic.in/coiweb/introd.htm; "Constitution Day: borrowed features in the Indian Constitution from other countries". India Today. Online: https://www.indiatoday.in/education-today/gk-current-affairs/story/constitution-day-borrowed-features-in-the-indian-constitution-1622632-2019-11-26

Indian Constitution, on the basis of which the following special legal order situations have been established:

- State of national emergency (Article 352)
- State of emergency (Article 356)
- Financial emergency (Article 360)

9.1.1. National state of emergency

This specific legal category typically links the threat to human life and property to threats of an armed or armed nature, be it the fundamental rights of citizens or the requirement of state sovereignty and integrity. A state of national emergency may be declared when the country is

- under attack, or
- affected by an external incursion by armed forces, and if
- internal rebellions make it necessary.

Article 352 states that if, for any of the reasons enumerated, the defence of India or any part of it is threatened, the President shall have the power to proclaim it for the whole or any part of the country. The President's decision is approved by the Cabinet of Ministers and is then referred to the bicameral Parliament (consisting of the upper house called the *Rajya Sabha* »Council of States« and the lower house called the *Lok Sabha* »House of the People«), which exercises legislative power. If either chamber fails to pass it by a two-third majority of the members present, the proclamation and its accompanying measures will automatically expire within a month, which, given the wide range of armed threats, is a serious time factor for an escalation but also for a major attempt to concentrate power. The interpretation of an armed dimension, by inference from the normative content, also covers situations that do not constitute an armed attack, and does not exclude its application in the case of internal insurrection of a military nature.

The creation of national states of emergency affects both the interests of people and the sovereignty of states. A significant consequence of this special legal order is that an otherwise federal functioning of the constitution is concentrated in a single point of power, the powers of central authorities are increased, and the legislature will have a special role in both the existence of the legal order and its termination. The Lok Sabha would extend the term of office by one year if it were to expire during the special legal order, and for six months after the expiry of the special legal regime.

Another significant effect is that the President is free to change the legal rules governing the management of property between the federal and state levels, and that the nature of special legal order allows for restrictions on human and fundamental rights, as laid down in the Constitution (Article 19), in accordance with the gravity of the circumstances giving rise to the proclamation.

9.1.2. State of emergency

The federal government is responsible under Article 356 of the Indian Constitution for ensuring that the administration of the state meets the requirements of its statutory obligations. If the President, on the basis of information received from the Federal Government, finds any deficiency in functionality, even in respect of a single state, to the extent that it is threatening the country, the Government, vested with the powers and functions of central administration at the federal level, will be empowered to initiate the declaration of a State Emergency by the President.

The entry into force of this special legal order must also be approved by both chambers of Parliament, failing which the necessary measures taken at the time of the proclamation may remain in force for two months. The effects of a state of emergency could fundamentally reorganise the machinery of the state legislature. The President may assume all the powers of the state governments, and appoint the Governor or any other administrative authority for any role. The President is also empowered to dissolve the legislatures of individual states, in which case the federal

bicameral parliament is given the power to make rules for the states concerned that were not previously implemented by federal legislation. However, that is intended as a measure for functional stabilisation and structural efficiency gains, which is not supposed to have the effect of changing the federal structure.

In a state of emergency, the exercise of special powers may take the following steps:

- the President may assume all or some of the functions of state governments, with the exception of the Supreme Court;
- may declare that state legislative powers should be exercised by or under the responsibility of Parliament;
- may take the necessary measures to implement them.

A state of emergency may be declared for a period of six months, and its extension is not unlimited and may last up to three years.

9.1.3. Financial emergency

The Constitution of India declares in Article 360 that the President can declare a financial emergency if he is satisfied that India's economic stability or its domestic and foreign monetary position is threatened. In such circumstances, the executive and legislative powers come into sharper focus than in peacetime. Its adoption is also subject to a decision by Parliament, and its immediate measures are subject to a two-month time limit, failing which they will lapse.

The following results of the declaration of a financial emergency have been secured:

- the federal government may give economic guidance to all other states;
- the President may recommend that states reduce the salaries and benefits of any or all levels of government officials;

- the President may direct federal government personnel, including Supreme Court justices and High Courts justices, to reduce their salaries and benefits.

9.1.4. Conclusions concerning special legal order in India

India's constitutional and state structure faces a number of challenges to overcome in terms of special legal order and crisis management. Among these, its geographical location and its exposure to climate change and resource constraints may well point to the absence of a special rule of law instrument to address those types of threat. It is also possible that the decision-maker will be in a position to deal with challenges in terms of governance, finance or, in some cases, even armed conflict. That arrangement is presumably best explained by the historical period in which the constitution was drafted and the threats of the decades that followed. The three special legal order categories also point to the fact that the symbiosis of influences from the individual constitutions can lead to a situation where, for example, the main depository of special legal order restrictions inspired by the Weimar constitution is an indirectly elected president through an electoral system, whose powers of governance are substantially more limited in peacetime. Despite its scope and detail, the constitution does not contain provisions on the operating mechanisms, nor does it create special legal orders concentrating specialised but otherwise non-functioning bodies, which on the one hand shows substantial similarities with European legislation, while on the other hand also shows that the exercise of presidential power and the functioning of the federal government and parliament were not envisaged by the legislator as a drastic overhaul.[204]

[204] For more on this, see SRIDHAR, Madabhushi, Evolution and Philosophy behind the Indian Constitution (page 22)" (PDF) Dr. Marri Channa Reddy Human Resource Development Institute (Institute of Administration), Hyderabad; CHANDRA, Bipan: In The Name Of Democracy: JP Movement and the Emergency. Limited, Apr 17, 2017; FARKAS, Ádám; KELEMEN, Roland (eds.) Between Scylla and Kharübdis - Studies on the Theoretical and Pragmatic Issues of the Special Legal Order and its International Solutions Budapest, Hungary;

9.2. Japan

Japan's current constitution came into force in 1947, at the country's most dramatic historical turning point, when it was forced by the Allies to surrender following the most destructive turn of the Second World War. Occupied by US troops until 1952, the text of the constitution was drafted in English by the government unit of the local headquarters of Allied Forces and only later translated into Japanese. Logically, that would lead to a prediction of total failure, or at least of impracticality and a boycott of Japan but its contents found social and political acceptance. Although it was subject to a major revision in 2022,[205] it has not yet been comprehensively amended. [206]

Unprecedented and clearly justified by the diplomatic and political period in which it was created, Japan's Constitution, Chapter Two, contains provisions whereby Japan forever renounces warfare as a sovereign right that has been granted to nations since common law times and in future will refrain from the use or threat of force in the settlement of its international disputes, preferring other means. In order to give effect to that unusual commitment, which is otherwise constitutionally binding and unthinkable without the consequences of unconditional surrender, the country had to also renounce the maintenance of land, sea and air forces and all other military capabilities.[207]

It is clear from this that neither constitutionally nor legally does Japanese law recognise any special legal order for martial law, and that Japan has at the highest level of the law made it impossible, or at least accepted under US pressure, the lack of possibility of combat readiness at any time. It is even more surprising, and mainly due to the importance - shocking

[205] Constitutional revision inches closer in Japan, but actual change still far off. The Japan Times. 11 July 2022. Online: *https:*//www.japantimes.co.jp/news/2022/07/11/national/politics-diplomacy/constitutional-revision-prospects/

[206] For more information, see MATSUI, Shigenori. The Constitution of Japan: a Contextual Analysis. Oxford. Hart Publishing, 2011.

[207] Article 9 of the Constitution of Japan.

and drastic in its time - of the caste of centuries-old monarchical traits, that the Constitution places the primacy of popular sovereignty at the centre to such an extent that no other special legal powers are granted to the head of state or, possibly, to the government embodying the executive power at this level of the legal source.

As explained above, there is a complete lack of special legal order or crisis management arrangements in the Japanese constitutional framework but that cannot mean that the country did not face a number of events, even in the last decade, which have necessarily stretched the more than seven decades of the system and brought to the fore the necessary processes which have so far taken a back seat to the desire to disarm Japan and dismantle the monarchy once and for all.

In the early years of the American occupation, it became clear that such an absolute disarmament of Japan, although beneficial to closing down the war, created a situation which, in the long run, would impose an unsustainable additional burden on the occupying forces. Such a move had, therefore not only removed the country's previous outstanding military aggressiveness but also its defence capability, which can be evaluated as a minimum requirement for its sovereign territory. In the spirit of optimisation, a so-called 'Security Treaty' was concluded between the United States and Japan in 1951, under which the deployed bases of the stationed US forces remained designated for the purpose of repelling external attacks against Japan, while Japan was authorised to deploy its own land and naval forces for internal threats and disaster relief, which was undoubtedly a significant step forward.[208]

The next major turning point came in 1954 when the interpretation of the "peace clause" under Article 9 of the Constitution was fully adopted, which, while constitutionally renouncing war, continued to regard the right of self-defence against external aggression as an inherent right of

[208] KOWALSKI, Frank: An Inoffensive Rearmament: The Making of the Postwar Japanese Army. Naval Institute Press, 2014. p. 72.

the country.[209] This is in line with the rules on the use of force in the UN Charter[210] and thus removes a striking aspect of the additional obligation not otherwise imposed on Japan by international law. Law 165 on Self-Defence Forces, passed in 1954, finally created the legal basis for the practical shaping of Japan's land, air and naval military forces. The capabilities of the Self-Defence Forces showed considerable independence from the 1951 US-Japanese agreement from the outset, and in terms of numbers and equipment, it became a dominant force of the region.

Article 78 of the Self-Defence Forces Act reflects the powers that are essentially a feature of emergency-type or crisis management arrangements in constitutions. According to this article, the Minister of Defence is empowered, where the safeguarding of public order and public security requires it in relation to non-military threats and emergencies, to assign tasks to the armed forces to intervene.

With regard to non-military threats, it can be generally stated that the Japanese legal system is characterised by a much more fragmented legal framework in this respect than the military. It can be interpreted as a sectoral state-of-danger-emergency web, with sectoral laws providing the

[209] Subsequently, this individual and collective content of the right to self-defence has created the possibility for Japan to use its armed forces abroad, whether at the request of the UN in Cambodia or in the international fight against terrorism in the Middle East, which is currently under way due to the deaths of Japanese citizens. See SLAVIN, Erik: Japan enacts major changes to its self-defence laws. Starts and Stripes, 18 September 2015.
Online: https://www.stripes.com/news/pacific/japan-enacts-major-changes-to-its-self-defence-laws-1.368783; "Japan set to expand SDF role in Sudan from May under new laws" Nikkei Asian Review. Kyodo, 22 September 2015.

[210] Article 2(4) of the UN Charter provides for a general and comprehensive prohibition of violence, with two exceptions. Article 39 provides for the possibility of a lawful use of armed force in a collective security regime, subject to a decision of the Security Council. Under Article 51, every State has the natural right to exercise individual or collective self-defence against armed aggression against it until the Security Council has taken the necessary decisions in the interests of international peace and security. On this subject, see Gábor SULYOK, The Right of Individual or Collective Self-Defence in the Light of the North Atlantic Treaty. State and Law 2002/1-2, p. 111; KAJTÁR, Gábor. In: Hungarian Military Law and Military Law Society, Budapest, 2019.

executive with separate and powers of action different from the general one. Article 71 of Law No 162 of 1954 on the Police provides for the declaration of an emergency in the event of internal conflicts of a non-military nature and for the management of a series of events that threaten the security of life and property, while Article 106 of Law No 223 of 1961 on crisis management provides a legal basis for that in the case of the whole range of natural and industrial disasters. In relation to the provisions referred to, the Government is required to notify the National Assembly but if it is prevented from doing so, it has the right to issue the necessary decrees to avert dangers.

In the field of health emergency regulation, the reactive nature of legislation has prevailed over preventive approaches, the main reason for which may have been the recent events affecting Japan globally and individually (one needs only think of the series of industrial and natural disasters). The result is also that the legal order in this area is much more fragmented: there is no comprehensive health-type specific legislation, with only Law 31 of 2012 on the Response to New Types of Influenza containing relevant provisions. In addition to the fact that, due to the coronavirus pandemic, the diseases listed in the law were bridged by the legislator with a rubber band, the content of which[211] is largely based on the experience of the 2009 avian influenza epidemic. Under Article 32, it is the Prime Minister, as head of the Governmental Health Control Centre, who may declare a state of emergency, specifying its duration and area. The emergency may be declared for a surprisingly long period, compared with the European average, up to two years, and may be extended to maximum one year longer. The provisions of Article 45 give prefects the power to impose a curfew, including the power to restrict or even suspend the operation of public facilities. The legislation provides that, should it become necessary to set up health facilities, the prefect may then make use of buildings previously used for other purposes, possibly for private purposes, and that he may also issue orders for the provision

[211] Act 4 of 2020 amended the New Type Influenza Control Act to include all influenza-type infections as an eligible disease for the purposes of the Act.

of temporary health services. In the event of non-compliance, the Head of Government is empowered by Article 45(3) to issue a notice and an order against those who refuse to comply. It is important to note, however, that only express disobedience to an order is considered to be unlawful conduct and that there is no provision to ensure the effectiveness of enforceability, as the law does not provide any rules on sanctions.

9.3. Republic of Korea (South Korea)

The country's current constitution was adopted on 25 October 1987, following a period of fierce battles between the opposition and the government over the weight of the president's legitimacy, and his or her direct election by the people. It was the text of the constitution that finally brought about a consensus: Article 67 of the constitution stipulates that the president shall be elected by the people by universal, equal, secret and direct suffrage. That was the opening of a constitutional revision that, on the one hand, significantly reduced the authoritarian nature of the state and, on the other hand, opened a new chapter in the country's modern democratisation by strengthening popular participation. The representative character and expectation behind the exercise of presidential power was naturally strengthened.

This is also cardinal to the subject under consideration because the Constitution of the Republic of Korea details the powers of special legal order in the Presidential Powers. In relation to the examples discussed above, it basically recognises a single emergency covering all situations as a specific solution. This statement needs to be supplemented by the fact that, in the event of an escalation of circumstances giving rise to a threat, as well as in order to deal with other threats of a military nature, the Constitution also provides for the President to introduce military law.

Under Article 76 of the Constitution, in the event of internal disturbances, external threats, natural disasters and serious financial and economic crises, the President is granted extraordinary powers to take urgent measures in the interests of national security, public order and public safety if there is not enough time to convene the National Assembly. The

Constitution authorises the President to issue decrees with the force of law for this period, subject to an approval of the National Assembly. If the National Assembly is not immediately informed and does not approve the decree, it will immediately cease to be in force, regardless of the need to respond to an existing threat. The importance of preserving democratic values free from threats is also reflected in the fact that, in addition to informing the National Assembly, the President is also bound by an immediate obligation to make it public. Paragraph (2) expressly limits the power to issue decrees to a specific purpose, to measures necessary to protect national integrity in the event of major hostilities threatening national security, and only in the event of the National Assembly being prevented from acting. More detailed questions of empowerment are no longer constitutionally provided for by the legislature but are dealt with by the sectoral regulations that are concerned with the actual threat.[212]

Article 77 of the Constitution provides for the content of military legal order mentioned above. The President may proclaim it in any case where the country is threatened with war, an armed conflict or equivalent internal national danger. Paragraph 2 divides military legal order into two sub-types: a preventive sub-type allowing for defence preparations and a more advanced sub-type of a state of war. An important peculiarity is that it is not in fact the distinction between foreign and domestic threats that determines the introduction of this legal regime but the purely military nature of the threat, which could be a significant step forward for the Korean legal system in the era of hybrid warfare, where the starting point of the threat and the assessment of an adequate response under international law, the establishment or rejection of a military dimension,

[212] An example is Law No 9847 on the Control and Prevention of Communicable Diseases, promulgated in 2009, which has provided one of the most effective legal frameworks for taking the necessary measures, including in the period of the new type of coronavirus pandemic in 2020.
On this, see KIM, Brian J.: Lessons for America: How South Korean Authorities Used Law to Fight the Coronavirus. Lawfare blog. 16 March 2020.
https://www.lawfareblog.com/lessons-america-how-south-korean-authorities-used-law-fight-coronavirus.

require challenging, legally, politically and diplomatically consistent, case-by-case solutions. Korean constitutional law can be considered particularly reactive in this respect.

The President shall also be obliged to inform the National Assembly immediately after the proclamation of this decision, and an absolute majority of the Assembly may refuse the proclamation and may at any time, irrespective of the existence of threats, terminate special legal order in this way.

10. Summary

The special legal order rules under scrutiny confirmed that special legal order is an institution of the rule of law, which can only be interpreted within the framework of the rule of law, where historical experience shows that although there are common features of special legal order regulation, the specific, in-depth regulation is always adapted to the historical realities, security environment and security challenges of the given period, and necessarily reflects the given social realities. Precisely for these reasons, it is not possible to draw a line across eras as to where the boundary between a normal and an exceptional situation lies, and therefore it is not possible to define a state institutional framework and a set of instruments across eras.[213]

Accordingly, we have not necessarily come across universal solutions or universal systems but we have come across partial institutions which, if properly interpreted, can provide guidance in the development of domestic regulation. As such, we can see that modern special legal order is staggered, i.e. we necessarily encounter institutions that seek to resolve emerging crises at a lower stage of escalation. There has also been a move away from a taxative framework for special legal order towards a general empowerment of the empowered. There is also a general tendency to give

[213] KELEMEN, Roland: The historical and theoretical system of exceptional power. Budapest, Gondolat Publishing House, 2022, p. 178.

special powers to the executive branch because the everyday possessors of power are more effective crisis responders than ad hoc executive bodies. We have also seen many examples of states setting up 'peacetime' bodies so that they can develop mechanisms at that time which, if they do not, they can only create in emergency situations, in the heat of the moment, without professional pre-screening. In an age of total challenges,[214] where these systems must be developed down to the individual, it is clearly necessary to have an institution that lays the foundations for total security adapted to total challenges, with social resilience as an intrinsic part of it.[215]

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II.
Basic rules - Chapter I of the Vbö.

1. Introduction

The Act XCIII of 2021 on the Coordination of Defence and Security Activities (hereinafter: Vbö.), which entered into force on 1 November 2022, has introduced a new field in Hungarian defence as well as state and legal system.[216] The novum represented by the Vbö.[217] cannot be considered to be without a precedent, however, in the context of the

[216] When the law was adopted, the legislator had set the entry into force for 1 July 2023, but in the context of the tenth amendment to the Fundamental Law, the decision-makers brought this forward due to a changing security environment and the need to put the related protection institutions in place.

[217] For more information see KÁDÁR, Pál: A short overview of the reform of Hungarian defence and security regulations. In: Hadtudomány 2022/1. p. 61-73; KÁDÁR, Pál (2022b): Gondolatok a védelmi-biztonsági szabályozás reformjának egyes kérdéseiről. Honvédségi Szemle, 150(1), 3–19. Online: https://doi.org/10.35926/HSZ.2022.1.1; KESZELY, László – VARGA, Attila (2022): A védelmi és biztonsági igazgatás új szabályrendszerének elemzése. Védelmi-biztonsági Szabályozási és Kormányzástani Műhelytanulmányok, 28.; KÁDÁR, Pál – TILL, Szabolcs (2022): A védelmi és biztonsági tevékenységek összehangolásának biztosítékai a Vbö. tükrében [Guarantees of coordination of defense and security activities in the light of the Act on National Defense]. Védelmi-biztonsági Szabályozási és Kormányzástani Műhelytanulmányok, 21.

author's research[218] and broader scientific investigations,[219] and in the regulatory sense, either, due to the concept and functioning of defence administration. The novelty and reform value is, therefore, not the need for harmonisation and its inclusion in a framework but the creation of an institutional or specific regulatory framework that was missing behind defence administration, the replacement of elements missing from the previous defence administration content, and the separation of defence and security administration from defence administration, thus creating a single level of government in the Hungarian state and legal system.

In the context of our topic, it is important to note already here that the use of the term 'state and legal system' is not accidental. The term ’legal system’ is an established concept, which, in Péter Szigeti’s words , *"in a formal sense, is the body of law in force in a given state at a given time."*[220] Further additions can and should be made in order to gain a

[218] On the background to the regulatory reform in line with complex security, see László LAKATOS, The special legal order and the regulation of national defence. KESZELY, László. Iustum Aequum Salutare 2017/4, 77-89; Lóránt CSINK. Iustum Aequum Salutare 2017/4, 7-16; CSINK, Lóránt – SABJANICS, István. In Lóránt, CSINK, (ed.): The impact of national security challenges on the private sector. Budapest, Pázmány Press, 2017, 261-285; FARKAS, Ádám. Reflections on the nature, significance and place of the special legal order in the modern rule of law. Iustum Aequum Salutare 2017/4, 17-29; Szabolcs TILL. Iustum Aequum Salutare 2017/4, 55-75; MÉSZÁROS, Gábor. Iustum Aequum Salutare 2017/4, 31-41; Csaba TORDAI: The limits of public law in times of epidemic danger (https://igyirnankmi.atlatszo.hu/2020/03/16/a-kozjog-hatarai-a-jarvanyveszely-idejen/); FARKAS, Ádám - Roland KELEMEN. Studies on the theoretical and pragmatic issues of the special legal order and its international solutions. Budapest, Hungarian Military Law and War Law Society, 2020; Szabolcs TILL. Budapest, Hungarian Military Law and Military Law Society, 2020); SZENTE, Zoltán. MTA Law Working Papers 2020/9; Pál KÁDÁR: The renewal of the special legal order and the Hungarian Military Legal and Military Law Society. KELEMEN, Roland. Military Law and Military Law Review 2017/1-2, 37-68.

[219] See Ádám FARKAS: A change of mindset in the protection aspect! Pázmány Law Working Papers 2015/18; Ádám FARKAS. Studies on certain legal and constitutional issues of the armed defence of the state, with special reference to the military defence of Hungary. Budapest, Hungarian Military Law and Military Law Society, 2016; Ádám FARKAS. In Honvédségi Szemle 2017/1, pp. 44-58; Ádám FARKAS. In. Ádám FARKAS. In Honvédségi Szemle 2018/4, pp. 20-32; FARKAS, Ádám. Farkas.Farkas, National Security Service of the Armed Forces, Budapest, 2019.

[220] Péter SZIGETI: Basic lines of law and state law. Budapest, Rejtjel Kiadó, 2011., p. 142.

deeper understanding. In their work on the state of the legal system, editors András Jakab and György Gajduschek put it the following way: *"The legal approach is usually content with a dogmatic presentation of the regulation, but we believe that this is insufficient for a meaningful understanding of the state of the legal system, so we also examine the social context [...], the likely effects, the purpose of the regulations and their social acceptability."*[221] This is a different extreme, which approaches the functioning of rules correctly, using a multidisciplinary yardstick but in many cases with criteria whose objective measurement and evaluation may leave some questions open. In comparison, Péter Szigeti defined the interpretative domain of state system as follows: "*The level of generalisation of state forms is on the particular plane of the generality of the state type, and although it further systematises by highlighting certain newer features, it cannot fully encompass individual, concrete states even when taking into account the economy of form and shape of states. The category of state system has therefore been developed in state theory to characterise the latter. We use it to characterise the individual nation state, which is bounded in space and time."*[222] The analysis of the specific and individual characteristics of a given time goes beyond the question of normativity and clearly points not only to the regulation but also to the institutions they establish, their relations, functioning, and environmental characteristics as well as the institutionalised framework for the exercise of political power.

That approach is of particular importance in the context of the coordination of defence and security activities, its basic principles and its future development, since it makes it clear that, in addition to specific legislation, a specific institutional framework and proper functioning are required to ensure that the new provisions are translated into reality and thus into the defence and security of the State, and consequently into all sectors of complex security, with sufficient effectiveness and innovation.

[221] JAKAB, András – GAJDUSCHEK, György: The State of the Hungarian Legal System. Budapest, Centre for Social Sciences, 2016, p. 5.
[222] SZIGETI, Péter ibid. p. 44.

The aim of this chapter is, therefore to provide an overview of the basic principles of defence and security activities, in such a way as to highlight the role of the Vbö. in the legal system[223] and analyse the individual provisions of the Vbö. as well as shed light on its implications for the state system, both in terms of its antecedents and its future development, since the real impact of legal provisions is determined to a considerable extent by their interpretation, their application and the subsequent decision-drafting and decision-making tasks associated with them, the latter being determined by the institutional and operational context.

2. Coordination of defence and security activities from a historical and whole-of-government perspective

The baseline of the coordination of security and defence activities can be properly approached if, in addition to the interpretation of provisions of the Vbö., it is also viewed from a historical-evolutionary perspective. Just as it is crucial to take into account state system aspects in addition to legal system connections, it is also essential to be familiar with earlier efforts and domestic aspects in order to understand the developmental phase of the Security and Defence Union and continue the reform process. In that respect, defence administration provides us with a clear starting point.

In domestic terms, *defence administration* can be considered a decades-old issue in terms of both norms and literature, which can be seen as one of the reactions of the Hungarian state and legal system to the complex concept of security. According to László Keszely: *With the end of the Cold War period, we have witnessed a complete rearrangement in our global and regional security policy environment. Almost simultaneously and closely linked to this, the last decade of the last century also brought a fundamental change in the social and political structure of our country. [...] In this period, our concept of security at the global, regional and*

[223] See FARKAS, Ádám: The place and role of the Act on the Coordination of Defence and Security Activities in the legal system.

national levels was characterised by a shift away from unipolar, military and military-political thinking towards a multidimensional concept of security. This was partly due to the experience of crisis management missions in the 1990s, which made it clear that military efforts alone were not sufficient to resolve crises. It has been recognised that the political, security, economic and social spheres are interdependent and that isolated efforts in their direction are not effective. Crises are complex in nature and can only be addressed in a complex way, requiring the full range of capabilities rather than the exclusive use of military forces. [...] The trends in the changing security environment and the related change in the perception of security have also required the defence management system to adapt, i.e. to move inevitably from a unipolar focus on military defence to a multi-dimensional development in line with a complex approach to security."[224] It is clear from this quote that the foundations of the development of defence management can be traced back to the defence of the nation and the military aspects of the management of the defence of the nation, which was referred to by various names throughout the history of our civil state.

That is clearly supported by the development of domestic regulation of defence, embedded in the dynamic state and social changes of the 19th and 20th centuries, which is also worth taking into account with a view to deeper professional reflection in the future.[225] That evolutionary

[224] KESZELY, László: The development trends of the defence administration from 1989 to the present and its future development trends from the perspective of a comprehensive approach. In: Júlia HORNYACSEK (ed.): The system of defence administration and its relation to the defence administration in theory and practice. Budapest, Dialóg Campus, 2019, pp. 9-10.

[225] See FARKAS, Ádám: The Emergence of the [Homeland] Defence Constitution in Civil Hungary 1867-1944, Budapest, Zrínyi Kiadó, 2019; KELEMEN, Roland: Beyond the Myths - Self-conceived exceptional power bodies in Hungarian constitutional history (From the Defence Commission to the Defence Council), in: FARKAS, Ádám, KELEMEN, Roland (eds.): Between Szkülla and Kharübdis - Studies on theoretical and pragmatic issues of the special legal order and its international solutions. Budapest, Hungarian Military Law and Military Law Society, 2020, pp. 113-147; Roland KELEMEN. In: FARKAS, Ádám – KELEMEN, Roland (eds.): Between Szkülla and Kharübdis - Studies on theoretical and pragmatic issues of the special legal order and its international solutions.

process had led to the emergence of a specific link between defence administration and national defence administration, which László Lakatos summarised in his formulation for the 2019 regulatory environment as follows. *"In the general scope of organising and preparing national defence activities, the concept of national defence administration – through which also its functions- was determined by the Government. Accordingly: 'b) Defence administration: a system of tasks and organisation forming part of the defence administration, within the framework of which the administrative bodies established for the defence of the country and designated for this task, as well as other bodies involved in defence, perform the tasks related to the preparation of those defined in Article 1(3) of Act CXIII of 2011 on Defence and the Hungarian Defence Forces and on the measures that may be introduced in the special legal order (Act on Defence), the defence of the country and the fulfilment of defence obligations.' The interpretation of this concept presupposes an understanding of the relationship between defence administration (as a sub-field within the state defence functions) and defence administration (as a field within the state defence functions as a whole). This means that defence administration itself is only a sub-area of defence administration (albeit the largest in its extent): 'n) defence administration: a system of tasks and organisations forming part of the public administration, which is the executive and executive activity of the public administration bodies established for the implementation of the defence functions of the state and designated for this purpose; it includes preparation for special legal regimes and all state activities aimed at planning, organising and implementing the tasks of defence, civil defence, law and order, defence economy and public supply in the above-mentioned periods and situations."*[226] This formulation links properly the

Budapest, Hungarian Military Law and Military Law Society, 2020, 43-79., KELEMEN, Roland. Budapest, Gondolat Publishing House, 2022.

[226] LAKATOS, László: The system of defence and defence administration, their place and role in the defence administration system. In: HORNYACSEK, Júlia (ed.): The system of defence administration and its relation to the defence administration in theory and practice. Budapest, Dialóg Campus, 2019, pp. 91-92.

relationships and the sub-parts of the issue, and also indicates that in this regulatory model, which included defence administration within national defence regulation, there was a significant overlap between the two administrative areas, also for evolutionary reasons, echoing the ideas of László Keszely. In this respect, since László Lakatos's thoughts were written down, the legislator has not made any significant changes to this dichotomy in a taxonomic sense, at least not until the drafting of the Vbö.

This kind of historical-evolutionary interconnection and change in the perception of security was also clearly formulated by the legislator in the general explanatory memorandum of the Vbö., which, in connection with the objectives of the law, was clearly listed among the fundamental principles, as an identification of the level of development that was to be achieved, on the one hand, and, on the other hand, the level of development that was to be achieved, which was more efficient and better adapted to the security environment. *"The legal development of the Hungarian state has reached a milestone in the field of defence and security. The triple conditionality of the ninth amendment of the Fundamental Law, the new types of crises and hybrid threats of the 21st century and the need to effectively deal with them, as well as the need to protect fundamental rights as widely as possible, have made it necessary to renew the legal regulation of defence and security tasks and measures that can be introduced in times of special legal order. The present law aims to meet these three aspects simultaneously. Its adoption would make a unique contribution to strengthening individual and collective security awareness, enhancing the sense of security and, ultimately, guaranteeing the greatest possible degree of effective security. [...] The Arab Spring, followed by the massive wave of illegal migration, the conflicts in Ukraine and the hybrid events that preceded them, the recent wave of terrorism in Europe and the development of information technology, together with the potential for crime in cyberspace, have marked a new epoch but the successive threats in our region have led the legislator to react on a case-by-case basis, in parallel with the management of specific crises. The changed security environment has made it necessary to step*

up cooperation between armed bodies and organisations, on the one hand, and to strengthen preparedness and response capabilities for defence and security in non-armed activities, on the other. [...]

With this law, the legislator complements the existing sectoral functioning with a framework for effective cooperation, replacing the sectoral delimitation and the whole-government coordination, making it a priority area to strengthen the preparedness and security awareness of society, as well as to make the normal legal crisis management and the special legal order regulation more effective."[227] - states the general explanatory memorandum to the Vbö., making it clear that the Act does not replace the previous institutional and regulatory framework but builds on them, however, now as a stand-alone framework. This is of fundamental importance because it makes it clear that the coordination of defence and security activities cannot be achieved effectively and its rules and ambitions cannot be properly understood without taking into account and synthesising the related institutional and regulatory frameworks as well as operational experience.

It is, therefore, an important innovation that while our previous legislation had not only closely linked defence administration to the defence sector from the state system side until the drafting of the Vbö. but also essentially overlapped it with defence administration in terms of organisation, operation and public policy, thereore, the Vbö. makes it independent and correctly constructs it not as a new sectoral administrative framework but as a network linking sectoral administrative systems. Such an attempt had already been made in the past regarding the field of political-governance solutions[228], but that experiment[229] and its teething problems well illustrate the novelty of the

[227] Excerpt from the general explanatory memorandum of the Vbö.
[228] On this topic, see KESZELY, László: Possible governance models for comprehensive action against hybrid conflicts. In: Honvédségi Szemle 2020/4. pp. 24-48; László KESZELY. In: Defence Security Regulatory and Governance Workshop Studies 2021/6; Ferenc MOLNÁR. In.
[229] KESZELY, László ibid. pp. 12-13.

Vbö. in that it is a new area, a set of functions, and envisages a specific institutional framework, not limiting the specificities of defence and other sectors but creating a possibility for a more coordinated operation and thus exploiting the systemic added value of the whole. However, from this brief and focused historical-evolutionary overview, we must also conclude for the following findings - also concerning the present volume and the underlying legislation as a whole - that it reflects a particular stage in an evolutionary process, which will be able to show adaptive evolutionary results in the future if it is backed up by deeper, more thoughtful, more systematic analyses and aspirations, which both the professional and academic community and institutional leaders can properly translate into practical and political domains. If either an innovative theoretical base, the appropriate and innovative practical functioning, or the socio-political environment receptive and willing to strengthen defence is missing or the balance between them is shifted, the potential and capacity for modern defence will be compromised.[230] The basis for the coordination of defence and security activities must, therefore, be correctly understood, first and foremost in its functional interconnections, in order to open up the way to a correct interpretation and application of the individual sets of rules.

3. An overview of the basic principles of the Vbö. and their links to traditional defence and security functions

By the basic principles of coordination of defence and security activities, this chapter refers to those legislative statements in the Vbö. and its explanatory memorandum that are essential to characterise the totality of the Vbö. as a whole, if you like, in terms of its purpose and orientation. These certainly overlap in part with elements of particular importance in terms of the place and role of the Vbö. in the legal system, but the

[230] On this topic, see FARKAS, Ádám: The place and role of multidisciplinarity in complex research on the regulation and organisation of security and safety. Public Law Review 2021/4, pp. 22-28; FARKAS, Ádám. FARKAS, Ádám. In.

interpretative orientation is different in the present context, and there is reason to believe that there are differences in the parts of the text in question.

3.1. Principles and taxonomic foundations of the Vbö.

Perhaps the most fundamental question of purpose is why the experts who prepared the law, the professional and political leaders who necessarily shaped and approved the draft, and then the Government and finally the members of Parliament, had decided to create a legal framework that presents such a picture, and for what purpose. In answering this question, the preamble to the law plays a key role, setting out the following as the main reasons for its creation:

a) The defence, security and development of Hungary and the Hungarian nation, as well as the assertion of its related interests, are seen as fundamental goals. In that context, it should be emphasised that the defence of the nation goes beyond the traditional territorial approach to defence, which is typically criticised in Hungary, mainly due to political overtones, whereas a conceptual and perspective approach adopted in many of the member states of the North Atlantic Treaty Organisation is essentially a national security attitude. However, in addition to a territorial approach - a national defence approach, if you like - the maintenance and development of security and the pursuit of related interests is an important consideration. This makes it clear that the basic principle is not just to actively provide a situation with security guarantees and protection but to develop a framework that seeks to develop security without any security markers, i.e. in its entirety. This is an important point because the development of security necessarily goes beyond the functioning and operation of capabilities that functionally guarantee the maintenance of security, i.e. it opens up a dimension of cooperation and action that is difficult to define, and whose very coordination, identification and decision-preparation opens up an

extraordinary management perspective. It could also lead to a paradigm shift.

b) The next objective is the coordinated and effective management and operation of capabilities to realise the first circle, which is important because of the distinct role of military bodies in public thinking in maintaining security but unmarked security in its complexity permeates the whole state and societal functioning and can easily become a focal area for crisis management, for example, the non-armed dimension, as the COVID-19 pandemic demonstrated. On the other hand, the range of related capabilities is also extremely broad in terms of defending and guaranteeing security, since, in addition to the active capabilities that have a defence function, the disciplines that support the functioning of those that do not have, or do not predominantly have, an active defence function must also be taken into account. However, the scope is further broadened in the context of the task of developing security, as it also includes the coordination of areas that do not normally have either a direct defence or a direct defence support function.

c) In addition to the foregoing, the desire to address the multiple and complex challenges and threats of the 21st-century security environment is clearly an open-ended and interpretational statement of intent, which most clearly reflects that the legislature was fully aware of the complexity of the security environment and crafted the law and its framework in the belief that it would enhance the effectiveness of addressing this challenge and threat matrix. This, when analysed in conjunction with the previous theorems, reflects, as a matter of course, an ambition for coordination within a state that spans the entire security spectrum and outside a related state.

d) The definition of coordinated preparation and defence against natural, civilizational events and threatening, harmful,

influencing and offensive behaviour based on human actions as a goal among the basic principles and purpose of the Vbö. can be understood as a kind of specialization or focus compared to the previous broad spectrum. That also reflects a link to regulatory and institutional evolutionary antecedents, as it highlights those areas of the complex notion of security where active and defensive state action is most characteristic. This element places particular emphasis on 'traditional' areas of defence, i.e. military and defence, police, national security and disaster management, within a possible - and in some respects indeterminate - security-guarantee perspective.

e) The above is built upon in a specific way by the reinforcement of a comprehensive approach to the tasks related to crisis management and the period of special legal order, since while "traditional" fields of defence are characterised by functional specificities and sectoral structuring with ad hoc cooperation, this point presents a comprehensive attitude, i.e. a cross-sectoral approach, as a priority objective in the categories of crisis management and special legal order, which are now known from practice and not only from theory. This, when seen in conjunction with the relevant earlier legislation and the literature on the subject, reflects both a state self-reflection and a developmental objective.

The coherence of the principles reflected in the preamble - and with it, the legislative decision - must (should) necessarily be reflected in the specific provisions of the law. If this is checked in an attempt to shed light on the basic principles of the Vbö.

- the tasks of defence, security assurance and security development,
- a focus on security as a whole,
- strengthening the coherence of skills and functioning to achieve it,

- the prominence of traditional security functions within the security mix, or
- a comprehensive approach to crisis management and special legal order operations,

we must look for provisions that strengthen us.

Article 1 of the Act can certainly strengthen the operational coherence of the above list with a legislative declaration of intent that *"the legal provisions related to the defence and the maintenance and development of the Hungarian nation shall be determined in the light of this Act."* Indeed, it is difficult to envisage greater coherence if the legislator does not provide for the development of additional rules for subsequent legislation to help enforce the framework already adopted. This endeavour is reinforced by Article 2, which states that *"the unified management of the provision of the matters referred to in Article 1 and the promotion of a modern concept of security in this context, as well as the coordination of the operation and utilisation of the organisations, capabilities and resources involved in this, are a task of the State."* In that context, not only is there a kind of state responsibility in the form of a state task but also the individual management of the promotion of a modern concept of security, which also reflects a need to enhance the coordination of different disciplines, specialisations and sectors.

Among the preamble's destinations or objectives, a distinctive role of traditional security functions in the comprehensive approach and coordinated enforcement of complex security is reinforced in Article 3 of the Vbö. It brings the 'traditional' security functions into a single framework, which has not been seen before at constitutional level, by stating that

"Article 3 (1) The three pillars of the enforcement of the provisions of Article 1 and, if necessary, of the armed defence of Hungary shall be

a) the system of defence and the Hungarian Defence Forces (hereinafter referred to as the Defence Forces),

b) the police and law enforcement agencies, and

c) *the national security services."*

The role of the "if necessary" turn is also important in this context. It highlights the fact that, although differentiating features of 'traditional' defence functions and state organisations that carry them out are a set of specificities arising from armed operational traditions, they also have a number of non-armed defence functions in guaranteeing security. Without these, the armed character alone would not be able to guarantee a lasting maintenance of security. In this context, the provision of specific expertise, planning and training tasks can be highlighted as examples. By presenting organisations with 'traditional' defence functions as a pillar, the legislator also reflects the process of domestic evolution. In this way, it reflects the specificities of the fact that, in the context of the wide-ranging problems of actively maintaining and safeguarding security, the solutions typical of these organisations are brought to the fore, in particular hierarchical and 'operations-focused' leadership and management but also, not infrequently, the involvement of bodies with a military character in the specific tasks, as reflected in a range of situations from migration management and epidemic management to involvement in humanitarian tasks in the wake of war. Such a mapping of one of the basic assumptions also carries weight in terms of linkages, as it necessarily implies that the crisis management approach has been dominated by the 'traditional' protection domain approach on the side of state intervention. That is reinforced by the fact that the legislator imposes on public authorities, in Article 3(2), a duty to cooperate with the pillars of the armed defence system in the interests of Article 1.

The complex approach to security and, the objective of security development and the requirement to strengthen the necessary coordination within and beyond the state, in addition to protection and security assurance, is also reflected in Article 3 (4) of the Vbö.

"the effectiveness of the defence and security of the country

a) the preparedness, training and cooperation of public bodies and the continuous development and strengthening of the relevant skills of their staff,

b) supporting society and modernising its perception of security, and

c) the continuous development of defence and security capabilities and related scientific knowledge

the basic conditions for the promotion and organisation of which are provided by the state, according to Hungary's capacity to bear the burden."

This provision clarifies the key components without which the desired objectives cannot be achieved in the complex security environment of the 21st century and sets out a new state commitment that does not override the key role of social and economic dimensions but merely reflects the primary responsibility of the state. It combines the importance of preparedness and cooperation by public authorities with the need for progressive action, the development of a supportive social environment and the security perception that is indispensable for security, and the development of defence capabilities and the related scientific knowledge. On the one hand, these factors together form the basis for a very extensive coordination, analysis and decision-support system but, on the other hand, they also show that the legislator has designed the provisions of the Act and the new system that emerges from them in the light of the specific features of the current security environment and the complex development needs that arise from them, and probably also in the light of the shortcomings of previous solutions in this area.

Within this framework, it is also worth looking at the principles of the Act, as they provide the main general operational and legal framework requirements for the Act as a whole but they can also provide a point of reference for the basic principles of the Act. In the light of these

principles, the basic principles of the Vbö.[231] can be interpreted as follows:

- *"The organisations referred to in Article 3 (1) and (2) shall act in a manner proportionate to the extent and social impact of the harm or damage they seek to prevent, prevent or remedy, and their action shall not go beyond what is necessary to achieve this."*
    - This principle essentially approaches the proportionality requirement from the point of view of the necessary social dimension of safety in the broad sense, since it highlights the need to base action in the field of safety assurance on a proportionality not only of the damage caused but also of its wider social impact. That may be justified by the fact that the legislator has also taken account of the treatment of harmful acts of symbolic or influencing significance, i.e. those which are based on indirect effects, where the extent of the direct damage and the derivative damage may differ significantly, which is an important issue from the point of view of proportionality.
- *"Decisions to promote the interests of safety and security, the tasks ordered and measures implemented on the basis of such decisions, and the procedures for their review, shall give primacy to the importance of the specific safety and security objective to be achieved in determining the extent to which they are necessary."*
    - This principle makes the weighting of the defence and security approach a clear preference, with a possible justification for the need for measures to prevent escalation but also, where appropriate, an increased self-reflective effort by the authorities involved to approach their own operations from a security perspective. That is

[231] Article 4 of Vbö.

important because of the complexity and dynamism of the security environment, as it reflects the legislator's awareness of the fact that there will be further significant changes in the field of maintaining and improving security, to which it is a fundamental requirement to adapt.

- *"In the performance of protection and security tasks and in the decision-making and measures relating thereto, it shall be ensured that, if the achievement of the objective in question can be achieved by a procedure that results in a lesser restriction of rights, that procedure shall be followed."*
    - This principle is about guarantees but it follows from the guarantee of security, since it also reflects a self-limitation by the State. It must not be ignored that the State's duty to guarantee security is not only expressed in its active action in the face of threats to security but also in the organisation of its own activities in such a way that they do not have unintended or unjustified additional effects on security. One of the limits to this guarantee could be the principle of the application of the least restrictive measure, if the state also enforces it in control mechanisms built into the process.
- *"The protection and promotion of defence and security interests shall be based on the requirement for a coordinated approach to planning, preparation, command and control, conduct of operations and lessons learned, taking into account the broadest range of challenges and threats, and taking into account comprehensive scientific knowledge, in the protection and promotion of defence and security interests."*
    - This principle clarifies the key and interdependent areas that are essential to enhance coherence and efficiency, furthermore points out that it is inconceivable to adapt to a dynamically changing environment without taking into

account the related scientific aspects in the evaluation of operations, development and experience.

- *"In the implementation of actions aimed at maintaining and improving defence and security, based on the law, the enforcement of the law and the exercise of rights shall be ensured with due regard to the level of safety of the community."*
    - This principle shows a particular direction, as it reflects the essentially group- or society-focused nature of security and thus essentially gives priority to the maintenance of a broad-based justice system, which is of paramount importance in stabilising security.

3.2. Basic principles for the coordination of defence and security activities in the provisions of the Vbö. and their cross-sectoral links

The basic principles of the coordination of defence and security activities are therefore defined in a complex way in the Vbö. It would be necessary to link that complexity to the specific provisions of the Defence and Security Act by means of an analysis that goes beyond the scope of the present report, since it goes without saying that the general principles of purpose and function set out above must be reflected in the specific rules governing operation in order to develop the principles beyond a theoretical statement of purpose into a general framework governing operation. That interconnection is reflected in the provisions of the Vbö. To illustrate it, the following overview shows the areas prioritised:

Provisions of the Vbö.	**The underlying context of the provision**
The concept of national resistance (Article 5 paragraph (7)) and specific provisions on national resistance (Chapter V)	The concept of national resilience is based on a flexible civil-military (defence-security) approach to complex security, which can only be effectively promoted through whole-of-government planning, organisation, development and delivery across security sectors and related public sectors. This is clearly in line with the conceptual framework of the founding principles, both in terms of a complex and comprehensive approach, and in terms of coordinated management and coordination, and of cooperation between public and non-public actors, including scientific capacities.
Definition of a defence and security incident (Article 5, paragraph (15)) "(a) a sectoral breakdown, crisis or emergency not constituting a special legal regime, as defined by law, or a serious incident affecting the supply, security or continuity of the population, b) a disaster or threat thereof, (c) a serious incident affecting the order and protection of the State border, (d) an event which seriously threatens law and order, public order or public security, (e) a serious event prejudicial to or threatening the continuity of the functioning of the State, f) A military threat significantly affecting Hungary, g) an event giving rise to a fraternity obligation; or	The concept of a defence and security incident - and the additional rules that apply when it occurs, subject to certain additional conditions - clearly reflect that – with regard to point (a), the cross-sectoral nature of the overall framework for crisis and incident management, which implies a coordinated application of functions, resources and capabilities, as well as management and preparedness coherence; – with regard to points (b) to (h), for each of the types of threat, which are regulated separately for each sector, albeit not always in detail, it is possible to call on the global government envelope, at a given degree of escalation. This solution reflects the experience of recent years of crises requiring cross-

Provisions of the Vbö.	**The underlying context of the provision**
(h) the occurrence or significant threat of a terrorist attack;"	sectoral action, from illegal migration and pandemics to the impact of the Russia-Ukraine war, taking into account several aspects of the principles.
The concept and system of defence and security management (Article 5 paragraph (16) of the Act), according to which it is "a system of tasks and organisation forming part of the public administration, which is the centrally coordinated planning, implementing and commanding activity of state bodies established under the direction of the Government or designated by law for such tasks to counter threats and attacks against Hungary and its population, in particular with regard to the management of crisis situations, the promulgation of special law and order, and tasks related to and preparation for the enhancement of civil and state defence and security awareness, including the defence administration and the military administration forming part of it, as well as the administration of related law enforcement agencies.'	In addition to the redefinition and regulatory and organisational autonomy of defence administration - building on the specific legal and state developmental, especially state systemic, antecedents of the basic assumptions described above - the approach to the system of tasks also defines the focal point of the basic assumptions, in which the focus has been placed on coordinated capability deployment and preparedness, cross-sectoral coordination, and governance, where necessary, within a single framework, particularly in the areas of crisis management, special legal order preparation and operation, and strengthening defence and security awareness. This approach, with a view to sectoral administrations, makes it clear that the aim of security and defence administration is not to replace sectoral administrations or to take over their roles and tasks but to focus on an appropriate interconnection of the two and on the performance of specific tasks arising from the overall framework, which is more than the sum of its parts, already embodied in inter-organisational cooperation.
Chapter III, Planning for Safety and Security and Related Tasks, highlighting the following purpose	This set of rules makes it clear that, on the one hand, function- and sector-specific planning and policy formulation will not

Provisions of the Vbö.	The underlying context of the provision
of the system of planning for safety and security: "Article 20 (1) In order to maintain, strengthen and prepare for the defence and security of the country, the Government shall operate a defence and security planning system. (2) The purpose of the defence and security planning system is to prepare the defence and security organisations and the bodies under the control of the Government involved in the performance of defence and security tasks for incident management, to strategically define their related operations and development and provide a framework for cooperation. (3) In the defence and security planning system, strategic and implementation-level planning documents shall be developed according to a centrally defined set of criteria, separately for each sector but coordinated at the government level, including the planning of budgetary resources."	be eliminated but. on the other hand, a new, whole-of-government planning system is needed for a coordinated operation of defence and security functions, which can resolve unnecessary duplication and possible inconsistencies between the different areas of professional fields. In a broader context, that is obviously a specific sub-system within the strategic management system of the government but it may be worth considering a revision of several points in the light of the Vbö. The security and defence planning system makes it clear that in order to realise the basic principles, it is essential to develop a coherent planning system for preparation, coordination and management, as well as implementation and development, from which concrete tasks can be defined and broken down to sectoral and organisational level, in line with the government's overall objectives and priorities. This coordination and efficient use of resources is reflected by the emergence of a centrally defined set of criteria at the government level and the building on top of planning that remains sectorally separated.
Certain tasks of the Government relating to the coordinated management of defence and security tasks and cooperation with bodies not under the Government's control (Art. 46) and the main rules for their performance:	The provisions transpose the basic principles of the Vbö. into the field of centralised management and governmental coordination, and thus the effective use and operation of capabilities under the control of the government, which must be compared with the rules of

Provisions of the Vbö.	The underlying context of the provision
"(a) submit to Parliament a draft resolution on the Principles of Security and Defence Policy and direct the elaboration of further documents on planning for security and defence, b) coordinate governmental and international cooperation tasks related to defence and security, c) determine the tasks of the members of the Government and of the State bodies under the Government's control in connection with the preparation and performance of tasks for defence and security purposes; d) manage the organisation of the defence and security management, [...] (f) ensure the continuity of the functioning of the State and of governance as provided for in the Constitution, in particular with regard to the provision of emergency and special legal order operations, [...] (h) define the national resilience development programme and manage its coordinated implementation, i) determine the main directions of the coordinated preparation and performance of the tasks of the Defence Forces, law enforcement agencies and national security services, as well as the framework	governmental management in the laws governing the defence and security functions of the state at sectoral or organisational level. That makes clear a cross-governmental and cross-sectoral nature and a broader scope of the Vbö., even in comparison with the defence framework, which is traditionally based on a strong need for administrative and social cooperation. In the area of translating the Basic Principles into concrete management powers, the provisions concerning the Government's responsibilities are noteworthy because they reflect an approach based on the Armed Defence Pillars and broad cooperation with them, with different tasks and powers being weighted towards armed defence.

Provisions of the Vbö.	The underlying context of the provision
for exceptional decision-making in this context, [...] (q) decide on the coordinated security action and related measures."	
Chapter X, Inspections and Exercises for Defence and Security Purposes, particularly the following provisions defining the nature of the inspections and the overall governance framework for exercises: "Article 72 (1) The central body of the defence and security administration shall monitor the fulfilment of the obligations arising from the performance of the defence and security tasks specified in this Act and related legislation by the ministries, the government agencies, central offices and national security services. (2) The inspection shall include, in particular, in the context of defence and security tasks a) planning, b) the organisation, c) training and education, d) the preparation, and e) the implementation of tasks effectiveness, efficiency and compliance with the requirements of government coordination,	The control framework is essential for effective coordination and governance, as it is difficult to imagine the control of cross-sectoral requirements according to uniform standards without an appropriate control system in place. In particular, given its nature, the mandate to audit is a fundamental condition for ensuring that the principles and normative framework set out in the Vbö. achieve their intended value in practice. In this respect, it will, of course, be necessary to consider over time the possibility of developing a comprehensive audit power beyond the organisational scope envisaged by the legislator, particularly in view of the discrepancy between the organisational scope of audit provisions in the rules on auditing and the tasks of the central body of the administration of defence and security which carries out the audit. In the context of control, it should be emphasised that control can essentially cover all significant phases of the provision of tasks, which are subject to requirements, guidelines and management from the whole-of-government level, and in this context it means efficiency, effectiveness and compliance control, which can ensure adequate control from the content side and, if necessary, the development of new requirements and

Provisions of the Vbö.	The underlying context of the provision
objective, fact-finding, concluding and recommending audit activities."	guidelines, or, in the case of experience, a fine-tuning of the system.
"Section 73 (1) State bodies involved in the performance of defence and security tasks, excluding military exercises, shall prepare for the performance of defence and security tasks in the framework of preparations, exercises and drills (hereinafter collectively referred to as "exercises"). (2) Compulsory exercises of a whole-of-government nature involving a wide range of State bodies involved in the performance of defence and security tasks shall be ordered by the Government in accordance with an annual schedule proposed by the central body of the defence and security administration, which shall not affect exercises organised by the sectors. (3) The compulsory exercises referred to in paragraph (2) may be (a) involving more than one body involved in the exercise of defence and security functions and their central and territorial bodies; or (b) exercises involving certain bodies or several bodies involved in	In addition to transposing the basic principles into practice, the rules on exercises can also be seen as an epochal milestone, as they clearly establish an independent exercise regime that can be extended to a broad spectrum of government administration, in addition to the previous military, law enforcement-bound exercise regime, which, in addition to cooperation and coordinated preparation, can, if properly applied, also strengthen the defence and security preparedness and awareness of "civil" administration.

Provisions of the Vbö.	The underlying context of the provision
the exercise of certain defence and security tasks but only at central or territorial level."	
The third part, entitled 'Coordinated Defence Action and Allied Tasks in Crisis Management', particularly the provisions on the basic framework for coordinated defence action: "Section 74 (1) In the event of a serious or protracted defence and security incident, the Government may decide by decree to order a coordinated defence action if the handling of the incident involves the joint competence of several defence and security organisations or administrative bodies and requires the application of measures specified in this Act in the event of a coordinated defence action or in the NATO Crisis Response System."	Coordinated defence action is essentially a specific objectification of the basic principle of the law concerning normal legal crisis management and the definition of legislative objectives, since it reflects nothing more than a general crisis management framework that can be invoked in any eventuality falling within the complex concept of security, provided that the legal conditions are met. This framework of conditions makes the framework applicable to a serious or protracted security and defence incident, i.e. an event of sectoral concern but of a higher level of escalation, on the basis of the principle of gradualism, ensuring the continuity of any action based on cooperation at sectoral level or between organisations but not involving the whole government. This is coupled with the joint involvement of several bodies and the need to apply adequate measures laid down by law, thereby demonstrating a specific requirement of necessity and proportionality, which is also linked to the principles. The emergence of coordinated defence action does not necessarily require a repeal of sectoral crisis regulations. In the medium term, however, it may be necessary, also in the light of relevant experience, to revise them, to reduce their scope and number, in order to further enhance their effectiveness and coherence, so that organisational

Provisions of the Vbö.	The underlying context of the provision
	cooperation action remains a main rule in the sectoral framework and coordinated defence action remains an intermittent instrument for normal cross-sectoral crisis management. That approach would make the system more transparent, predictable and practicable, and would also further strengthen the enforcement of principles.
The fourth part, entitled "Rules on Special Legal Order Preparation and Operation and the Range of Exceptional Measures that May Be Taken".	The provisions covered by the present section deal with the rules on special legal order in one place and thus eliminate an earlier solution, whereby the majority of special legal order cases were dealt with in the Defence Act, while emergency situations in the Disaster Management Act, with some similarities but different regulatory solutions and with such regulatory solutions that vary from case to case rather than a general approach. This uniform legislation sets out a general regulatory framework for special legal order measures, which reflects the basic principle of the importance of special legal order preparation through concentrated regulation, and delegates the provision of details in the area of planning and preparation to the Government and the central body of administration responsible for defence and security. This solution does not allow for transparency at the statutory level and direct planning on a statutory basis without the coordinating management level but, on the other hand, it reinforces the importance of whole-of-government coordination and cross-sectoral management appearing in the fundamental principles.

In terms of the links between the fundamental principles of the Vbö. and other areas, it must be seen in principle that, by providing a framework adapted to a complex understanding of security, covering essentially all phases of defence and security assurance, these principles permeate all the regulatory and public-social fields of action that may be relevant to any sector of security. However, it follows from a generalised set of statutory tasks on the side of public bodies, and from more narrowly defined tasks and cooperation with public bodies more broadly for non-state bodies.

However, there is a well-identifiable, if you like, positivist scope of connections, which, due to the ongoing and unfinished nature of the defence and security reform, constitutes an open set, i.e. it will presumably be extended with additional elements. The scope of these links, which also emerge from the normative framework, is defined, on the one part, by the Vbö. itself

a) its interpretative provisions (in particular, the concepts of defence and security incidents as well as defence and security management), which are relevant to other sectors and organisations and which also provide a specific link;

b) with rules referring to other legal/sectoral frameworks (for example, in the field of compulsory military service, defence labour obligations, or the management of the defence preparation of national economy); and

c) amending provisions which affect

   - Act XXXIV of 1994 on the Police,
   - Act CXXV of 1995 on National Security Services,
   - Act XLIII of 2010 on Central State Administration Bodies and the Status of Members of the Government and State Secretaries,

- Act CXXII of 2010 on the National Tax and Customs Administration,
- Act CXIII of 2011 on National Defence and the Hungarian Defence Forces and on Measures that May Be Introduced in Special Legal Regimes (the Vbö. repealed the Hvt.),
- Act CXXVIII of 2011 on Disaster Management and the Amendment of Certain Related Acts,
- Act XXXVI of 2012 on Parliament, and
- Act CXXV of 2018 on Government Administration.

These links, in addition to the unification of previously overlapping rules and the transposition of the terminology of the Vbö., also closely affect the fundamental principles, since they are necessary to ensure more effective governance and coherence, and are also a consequence of a central role of the armed defence system and are intrinsically linked to a more effective preparation and provision of crisis management and special legal orders.

However, the legislator has also taxed further links between the basic principles of the Vbö. by incorporating a number of rules relating to the Vbö. into various laws of the legal system, in particular

- with Act CXXI of 2021 amending certain Acts on internal affairs in connection with the ninth amendment to the Fundamental Law and Act XCIII of 2021 on the Coordination of Defence and Security Activities,
- Act CXL of 2021 on Defence and the Hungarian Defence Forces, and
- by enacting Act VII of 2022 on Amending Certain Acts Related to National Defence, Economic Development and Government Administration.

The linkage matrix drawn up thus by the legislator already clearly reflects a complex concept of security and the principle of the Vbö. that, although

"traditional" armed defence and security functions carry the main focus, it is of paramount importance to link "civil" administrative areas to them, including their regulation.

That linkage is expected to evolve further as the reform progresses and the new system set up by the Vbö. becomes operational and begins to gain its first operational experience. In particular, the development of national resilience and security awareness, as well as the channelling and promotion of scientific knowledge to improve the coordination of defence and security activities in general, may require a regulatory strengthening of links between a number of other disciplines, from education and training, research and innovation to the regulation of various security-related content services and their development.

In order to identify these further links in detail, I believe that, in addition to operational experience, the principles can provide useful starting points, especially in terms of cooperation between public and non-public spheres and the promotion of the exploitation of scientific results. In the light of experiences identified in the context of various research and support programmes and the administrative constraints of defence management, the establishment of a discursive and institutional framework, separate from the practical operation of defence and security management, can help to realise these, and the directions of this framework can already be identified.

4. Summary

As regards the basic principles of coordination of security and defence activities, it cannot be overstated that the Vbö. is part of an evolutionary process of reform, which is still ongoing. That process is analysed and examined in other studies in this volume. However, it also follows from this processual nature and central role of the Vbö. that the basic assumptions that define the Act are also essentially the basic assumptions of the reform process. It represents a new level of development in the

defence dimension of the development of the Hungarian state and law, a correct interpretation of which is of fundamental importance for the interpretation of the specific sets of rules and the continuation of the reform.

In the present chapter, I aimed to take stock - in a basic way - of the broader developmental context out of which the novelty of the Vbö. grew and how that novelty is reflected in the provisions and justification of the law. The basic premise of the chapter is that a correct interpretation of the Vbö. and, with it, the reform process goes far beyond a simple grammatical interpretation of the normative texts and their possible transformation into implementing rules, since without an overview of environmental effects and various political-legal-institutional antecedents, the sub-elements may step outside their original framework. One could say that it is like a grandiose construction project in which it is not enough to know the building tasks of today and tomorrow, but it is also important to know how they fit into the system of building plans and the system of objectives that the plans envisage for the design.

Thinking about the basic principles of coordination of defence and security activities thus opens a bridge to both the broader connections and the correct interpretation of the individual Vbö. rules. These bridgeheads, in turn, create an opportunity to provide those applying the law with additional knowledge and systemic insight. Knowledge of history and circumstances, and of the many interrelationships behind specific rules, can shape interpretation and application. The real value of normative frameworks can be shaped to a fate-shaping extent by transposition into reality, and in this case, despite the weight of administrative aspects, this transposition has a clear and direct interaction with the defence and security of Hungary and the Hungarian nation. In that context, I believe that the fundamental principles serve both as a signpost in the process and a warning that needs to be reconsidered again and again so that the reform of defence and security does not only lead to the creation of new institutions, new functions and new legislation but also a real increase in

the efficiency of a systemic functioning of defence and security as well as the modernisation of the concept of security.

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III.
Obligations relating to defence and security - Chapter II of the Vbö.

1. Introduction - the constitutional background to the system of defence and security obligations

In order to protect the security of life and property of the State and its citizens, the Fundamental Law provides for a number of obligations in the legislation to ensure that, in the event of an emergency, human and material resources are available to protect, prepare for or repair damage resulting from an incident or to ensure recovery.

This system of obligations is reflected in Hungarian legislation in a number of places, from the Fundamental Law to the obligations set out in individual laws. However, in a general way, the modification of obligations within the framework of the Fundamental Law can also be assumed as an essential element of special legal decrees, for example, the COVID-19 and the emergency crisis management of the secondary humanitarian effects of the Russia-Ukraine war have had a substantial impact on the forms of public expenditure.[232]

The obligations relating to defence and security, particularly as indicated in the title of Chapter II of the Vbö., are easy to identify in a first approximation: Chapter II of the Vbö. is summarised in four subtitles in Articles 6-19. Of these, Subtitle 3, containing Articles 6-7, is a summary description of the system, and Subtitles 4-7 are detailed descriptions of a named type of obligation in Subtitles 6, 5 and 1, respectively. This chapter is directly linked to the summary description of the obligations under

[232] For a summary of the criteria of constitutional reviewability, see CC Order 3214/2023 (5 May) in case IV/1568/2022.
https://alkotmanybirosag.*hu/ugyadatlap/?id=790C88E39A54D7F5C125887C005B231A*

Article 5 Point 17[233] of the Vbö. as an interpretative provision, and the scheme is supplemented by implementing government regulations as a result of the package of delegated powers under Article 83 Point 1.[234]

In a first approximation, the boundaries of the scope of the chapter can be defined independently by examining the Vbö., i.e. the implementing legislation itself: according to the system of rules defined by the act and detailed in the implementing legislation, the state expects its obligated parties to fulfil specific obligations in order to provide resources for defence and security functions under certain conditions. It is through the enforcement of these obligations that the State guarantees the implementation of its own protection. In this context, the conditions of the obligation itself, in particular its extension or reduction in time or obliged persons, may become a differentiating factor.

However, the above statement is true only as a systemic description of a primary approximation since it does not take into account the link between the Vbö. and the Fundamental Law, in which the latter is a determinative element, and is also manifested in the link to Article XXXI Paragraphs (1), (4), (5) and (6), highlighted in the preamble of the Vbö. and in the cardinality clause. An examination of Article 85 of the Vbö. shows that the vast majority of the system of obligations relating to defence and security (other elements of the subjects different from the obligation to notify defence and security) is a cornerstone of the Vbö, comparable only with the special legal order-related rules on legal preparation under Chapter XIII but fundamentally different from other chapters of the Vbö. From the point of view of constitutional embeddedness, Chapter II of the Vbö. can be regarded as directly related and substantively determined, a cornerstone of the law, which, because it

[233] "17. obligations of defence and security: obligations which the State may impose on natural persons, legal persons and entities without legal personality in order to maintain and develop the defence and security of the country and the nation;"
[234] "1. the detailed rules relating to the civil protection obligation and the obligation to provide economic and material services, the technical data relating to the property, services and technical equipment recorded in the register kept for the purpose of ordering economic and material services,"

goes beyond previous regulations, is also reflected in the cornerstone nature of provisions deregulating elements of the related laws. While however, the obligation system of Act CXXVIII of 2011 on Disaster Management and the Amendment of Certain Related Acts (hereinafter: Kat. or the Disaster Management Act) was essentially emptied out as a result of Article 92 of Vbö., since its content was transferred to the latter one, the Defence Act remained the centre of gravity of the obligation system with regard to the defence elements of the system of obligations, even after the adoption of Act CXL of 2021 on Defence and the Hungarian Defence Forces (hereinafter: Hvt. or the Defence Act) .

Thus, while the legal level of the regulatory situation prior to 1 November, 2022 could be described as two independent sub-regimes with the duality of Kat.and the former Defence Act, according to the new duality in Chapter II of the Vbö. and in Hvt. we can find the subjects of obligations combined. There was no need for detailed regulation in the segment of these obligations covered by Hvt. Articles 19-45. The definition of the regulatory regime of the system of defence and security obligations is thus both a direct and indirect subject of the Fundamental Act, in that the terminology of defence and security does not appear in Article XXXI of the Fundamental Law but the naming of the objective of defence and disaster prevention does appear recurrently.

The system of defence and security obligations under the Vbö. is therefore an abstracted umbrella concept, the elements of which typically have their own "constitutional legs". However, in relation to the constitutional legs, the concept of defence and security obligations is expansive in both its purpose and its subject matter, generalising the description of the broadest case of occurrence in constitutional law:

- the *purpose is* doubly linked to both statehood (country) and nation, where it is expressed in terms of both defence (responding to challenges) and security (state, keeping challenges manageable) in both a maintenance (static) and development (dynamic, value-added) sense;

- the *subject* is any natural person, legal person or other entity, anyone/everyone;
- the constant summarising element, on the part of the State, is the possibility of unilateral determination of legal relations - or the absence of a consensual element - which, however, may be of particular importance in terms of the general nature of the rules imposing obligations and the discretionary freedom as well as variability of the advantages and exemptions.

All this - compared to Article XXXI of the Fundamental Law - is connected to a considerably narrower constitutional footing: apart from the fact that the article referred to also contains disaster prevention and management objectives as elements of the system of national defence obligations, ultimately, in the case of challenges not falling within the two concepts, being typically law enforcement challenges, it cannot rely on constitutional obligations of a specific nature, so that in this area the legal bases of a horizontal nature (e.g. public financing, compulsory schooling) can only be based on a doctrine of fundamental rights limitation.

An argument of the contrary can be supported if the obligation to "protect the homeland" under Article XXXI (1) of the Fundamental Law is given a specific meaning beyond the scope of the interpretation of national defence, passing beyond the pre-reform approach of defence and security, which had focused on the military protection of the homeland.[235] The primary element of extension that has emerged is the constitutionalisation of the objective of disaster prevention. While the title of Chapter II of the Vbö. seemingly builds on an expansive interpretation of Article XXXI Paragraph (1) using the terminology of the defence and security obligations, the detailed regulation does not actually go beyond the

[235] TILL, Szabolcs: Asterix és az európai munakidő-szervezés; (Asterix and the European organisation of working time); Katonai Jogi és Hadijogi Szemle 2021/3. *https://epa.oszk.hu/02500/02511/00012/pdf/EPA02511_katonai_jogi_szemle_2020_1_159-213.pdf* 161-164.

military and disaster prevention objectives,[236] although the generalising the obligation of notification can be interpreted in a counter-terrorism context, for example, it also carries a potential for further tightening, especially in the event of an acute challenge. If, however, the target system is defined in the detailed regulatory manner of the Fundamental Law, the constitutionality of an expansive interpretation would be difficult to hold. At the same time, the defence of homeland does not necessarily have the same interpretative scope as the military defence of homeland, even if the original wording can be traced back to the constitutional differentiation of the system of obligations in the field of defence.

In addition to examining the system of personal obligations together with the obligations regarding economic and material services,[237] it is worth analysing the individual statutory obligations on the basis of a comparative framework of criteria in terms of purposes, subjective limitation and temporality, since these are the criteria that ultimately provide the framework conditions for the statutory regulation.

[236] See the Ministerial Explanatory Memorandum to Articles 6-7 of the Vbö., justifications Journal No. 83, Annex to the Hungarian Gazette Thursday 1 July 2021, 1211.
"These provisions of the Proposal present a unified system of defence and security obligations and open up the possibility for the legislator to lay down additional obligations related to the activity in the sectoral legislation, in addition to the rules set out in this Act.
The Proposal also lays down common rules, among which the rule excluding the parallel imposition of personal obligations, i.e. military service, national defence work and civil protection obligations, is noteworthy, in comparison with the previous parallel and sectoral rules."

[237] The separation would be particularly difficult in the case of a service obligation in the form of driving a private company car, where, in addition to the dominance of the property nature of the car, the driving segment also carries a form of work obligation in its effect.

Article XXXI of the Fundamental Law	**Type of obligation**	**Target**	**Subject specificity**	**Temporality**
(1) All Hungarian citizens shall be obliged to defend the country.	general defence	defence of the homeland	citizens	general
(2) Hungary shall maintain a volunteer reserve system for national defence purposes.	institutional/organisational	defence	State	general
(6) In the interest of performing national defence and disaster management tasks, everyone may be ordered to provide economic and material services, as provided for by a Cardinal Act.	economic and material services	defence or disaster management	general subject (everyone, including organisations) [238]	general/variable focus

[238] "Article I Paragraph (4) Entities created under the law shall also be guaranteed fundamental rights and shall be subject to obligations which are not by their nature limited to man." Emphasis added.

Article XXXI of the Fundamental Law	**Type of obligation**	**Target**	**Subject specificity**	**Temporality**
(5) For adult Hungarian citizens with domicile in Hungary, a civil defence obligation may be prescribed in the interest of performing national defence and disaster management tasks, as provided for by a Cardinal Act.	civil defence obligation	defence or disaster management	Hungarian citizens of full age, residents in Hungary	general/variable focus
(4). During a state of war, adult Hungarian citizens with domicile in Hungary may be ordered to perform labour for national defence purposes, as provided for by a Cardinal Act	labour service	defence	Hungarian citizens of full age, residents in Hungary	state of war option

Article XXXI of the Fundamental Law	**Type of obligation**	**Target**	**Subject specificity**	**Temporality**
(3) During the period of state of war, adult male Hungarian citizens with domicile in Hungary shall perform military service. If military service involving the use of arms cannot be reconciled with the conscientious belief of the person obliged to perform military service, he shall perform unarmed service. The forms and detailed rules of the performance of military service shall be laid down in a Cardinal Act.	military service: alternatively armed or unconditionally unarmed	defence	residents of Hungary, of legal age, Hungarian citizens, male	state of war automatism (previously state of preventive defence consideration + state of national crisis)

Table 1: Classification of obligations under Article XXXI of the Fundamental Law

From the point of view of the obligations ranked by scope, Article XXXI Paragraph (2) appears as an exception in that, apart from its general temporal validity and its military defence purpose, the subject of the obligation is the narrowest, the Hungarian State itself, and thus it actually constitutes an obligation to establish and maintain an organisation. *Table 1* lists the other obligations in descending order of their subject and purpose, effectively reversing the order in which they are regulated.

Beyond Article XXXI of the Fundamental Law, it contains relatively few obligations. Their formulation and location are less focused, but they may gain significance in the context of defence and security, especially in the case of an extended application of the obligation to protect homeland compared to the defence-type domain of interpretation presented in *Table 2.*

Fundamental Law normative text	**Type of obligation**	**Target**	**Subject specificity**	**Temporality**
Article C Paragraph (2) No one shall act with the aim of acquiring or exercising power by force, and of exclusively possessing it. Everyone shall have the right and obligation to resist such attempts in a lawful way.	general (statutory) right and obligation to take reparation action	the constitutional order of exercising power	everyone (organisational sense?)	unlimited but reactive, conditional

Fundamental Law normative text	**Type of obligation**	**Target**	**Subject specificity**	**Temporality**
Article P Paragraph (1) Natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, as well as preserve them for future generations.	nature and heritage conservation obligations	sustainability	state + everyone (also in organisational terms)	general
Article XXI Paragraph (2) Any person who causes damage to the environment shall be obliged to restore it or to bear the cost of restoration, as provided by law.	reparation liability	environment protection	general, organisational ones	general, reactive

Fundamental Law normative text	**Type of obligation**	**Target**	**Subject specificity**	**Temporality**
Article O Everyone shall be responsible for him- or herself and shall be obliged to contribute according to his ability and means to the performance of state and community tasks according to his or her abilities and possibilities.	general contribution	public and community functions	everyone (organisational sense?)	general
Article XXX Paragraph (1) Everyone shall contribute to covering common needs according to his or her capabilities and to his or her participation in the economy.	public charge refund	cover for public needs	general but also conditional, organisational	general but circumstance-dependent

Fundamental Law normative text	**Type of obligation**	**Target**	**Subject specificity**	**Temporality**
Article XII Paragraph (1) Everyone shall have the right to choose his or her work, and employment freely and engage in entrepreneurial activities. Everyone shall be obliged to contribute to the enrichment of the community through his or her work, in accordance with his or her abilities and potential.	labour contribution	community enrichment	everyone but not in an organisational sense	general but context-dependent
Article XVI Paragraph (3) Parents shall be obliged to take care of their minor children. This obligation shall include the provision of schooling for their children.	taking care + education	child development	parents	general

Fundamental Law normative text	**Type of obligation**	**Target**	**Subject specificity**	**Temporality**
Article XVI Paragraph (4) Adult children shall be obliged to take care of their parents if they are in need.	taking care	taking care of a parent in need	adult children	general

Table 2: Classification of additional obligations under the Fundamental Law

There are conceptual links between the specific obligations, which are quite extensive in the Fundamental Law compared to previous constitutional rules, and the catalogue of obligations under Article XXXI of the Fundamental Law:

- compared to the general obligations of taxation, both work for defence purposes and civil defence, as well as economic and material service obligations are aimed at supplementing the resources that can be mobilised at a given time, typically subject to conditions of a temporal or situational reactive nature,
- preservation and restoration type obligations, which are mostly related to disaster management objectives but ultimately also include a general law and order aspect in relation to the duty to resistance,
- in the case of care and maintenance type obligations, the individual obligation in peacetime - the balance of state institution-maintenance may be shifted in the event of a different logic of organisation of a wartime care regime, if the extension of care systems (orphanages, soup kitchens) which do not operate on a mass scale in peacetime in order to meet defence obligations results in a changed statal task.

The possible link between general and Article XXXI constitutional obligations can thus become a two-way street: the link between general and specific formulations is typical (e.g. general taxation as well as economic and material service obligations), but they can also be in competition, especially in extreme circumstances of war (the proportionality between the obligation to care for dependants and the obligation to perform military service or defence purpose labour). It is not only the comparability of obligations and restrictions of rights that can be understood in this way but also the relative primacy of obligations in relation to each other, based on a pattern of proportionality of conflicting rights, which results in a temporally varying range of discretion.

Starting from a thus supplemented and expanded fundamental obligation approach,[239] the partially pivotal nature of Article 6 of the Vbö., which aims to describe the system of obligations, can be interpreted while Article XXXI. Paragraphs (3) to (6) of of the Fundamental Law, which historically linked to national defence, the provision of a cardinal statutory regulation is a constant element, whereas the obligation segment of the right to resist the activity of violent acquisition or exercise of power or its exclusive possession under Article C Paragraph (2) of the Fundamental Law does not contain such a specific provision. Accordingly, the extension of the obligation to report for defence and security purposes from disaster prevention and management to the defence of the state in Article 6 Paragraph (1) of the Vbö., which sets out the system and basic rules of obligations, can be justified in the same way

[239] It is not constitutionally evidential that obligations must be based on a constitutional level, although it is an argument in favour of the proportionality position in the fundamental rights-limitation comparison. On the constitutional self-limitation technique of the regulator and the different constitutional regulatory logic of fundamental rights and obligations, see the dissenting opinions of CC decision 50/2001 (29.11.2001) on the exclusion of a referendum on the abolition of conscription. *http://public.*mkab.hu/dev/dontesek.nsf/0/EF6DDCE7BBE8FF41C1257ADA005296E0?OpenDocument "All the constitutional judges who wrote dissenting opinions on the decision have stated that the fundamental rights and obligations enshrined in the Constitution differ significantly in their legal nature. Their constitutionality must reflect this qualitative difference." From recent decisions of the Constitutional Court; Fundamentum 2001, No 4 *http://fundamentum.hu/sites/default/files/01-4-13.pdf* 136.

as a *sui generis* provision for the defence of homeland, which in the aspect of national defence and homeland defence in a broader sense can be linked to Article XXXI Paragraph (1), and in the sense of challenges to law and order/national security can be linked to Article C Paragraph (2) as an obligation.

However, in the case of the obligations highlighted in the Fundamental Law, constitutional limits are also imposed on the Vbö and its implementing regulations: civil defence obligations cannot be enforced against a law enforcement or national security challenge but they can be enforced against the catastrophic consequences of a possible terrorist attack. Likewise, the exclusion of economic and material service obligation in the case of a law enforcement or national security challenge that does not have military status, if it does not have consequences that can be classified as disaster prevention, is maintained. A new type of obligation could therefore be introduced into the system but the boundary constitutional conditions also affected the primary regulatory quality of the Vbö. and Hvt. beyond the time and purpose limits. The Vbö. could only opt for an elaborative regulatory approach if the scope of interpretation beyond the purpose of national defence could be grasped: this regulatory choice gave rise to Subtitles 4-6 and the determinations under Subtitle 7 of the related Acts.

2. Obligations in the Vbö.

Keeping in mind the above constitutional framework, the Vbö. presents the obligations of defence and security as a unified system, and does so in such a way that, in addition to the rules set out here, the sectoral regulations may also define further obligations specifically related to sectoral activities. The field of defence and security has now developed into a system of rules that permeates the entire organisation of the State but at the current stage of legal development, it would not be practical or possible to include all the relevant provisions of every sector in a single

code-like regulation without compromising the interpretability of sector-specific laws.

A logical and regulatory link in the liability regime can be revealed and demonstrated, which, overall, points towards a uniformly dynamic operation of defence. Many of the defence and security obligations are detailed in other legislation but the Act declares their existence and brings their reflection into a single system of principles established by law. These include the obligation to perform military service, whether armed or unarmed, and the obligation to perform military-related labour for defence purposes, the details of which are set out in the defence legislation but which are also elements of the system of obligations in the Vbö. By this solution, the legislator has also achieved that the system of defence and security obligations appears as a kind of larger unit alongside and beyond classic defence obligations, thus expressing the fact that the complexity of defence can no longer be confined to the framework of pure military defence, law enforcement or other sectors and that the related system of obligations must also be more complex than before.[240]

The framework nature of the Vbö. is reflected in the fact that the details of certain obligations are laid down in separate acts. Thus, the provisions on armed or unarmed military service during a state of war and the

[240] In the longer term, this could raise the possibility of clarifying the Fundamental Law with regard to the state of emergency. For example, Article XXXI Paragraph (5) of the current rule allows the enforcement of economic and material service obligations only for the performance of national defence and disaster management tasks, whereas the uniformity of the special legal order of extraordinary measures clearly points in the direction of not excluding the emergence of such a claim in the context of the management of circumstances triggering a state of emergency.

additional obligations[241] ensuring them have been included in Hvt.[242] This is also a regulatory solution adopted in relation to the obligation to perform military service,[243] which is clearly a form of obligation that can be linked to national defence and cannot be called upon to perform other tasks, such as disaster management, as part of the overall field of defence and security.

In the light of the above, only the remaining three areas of obligations are regulated in their entirety by the Vbö. These are

- the civil defence obligation, [244]
- the economic and material service obligation[245] and
- the obligation of notification for defence and security purposes[246] .

The aim of defence and security obligations under the new legislation is to be based on the provisions of the Vbö. and Hvt:

- in times of armed conflict and disaster, protecting human life, protecting material goods necessary for human subsistence,

[241] The Fundamental Law does not define the exact content of the obligation to go to war, so the rules had to be provided by legislation at the cardinal level. See Hvt. Article 19 Paragraph (1) Military service consists of the military service obligation and its accessory obligations pursuant to Article XXXI Paragraph (3) of the Fundamental Law. The accessory obligations are as follows
a) the provision of data,
b) the notification, and
c) the appearance of
Commitment.
[242] Hvt. Article 35.
[243] Hvt. Article 44.
[244] Vbö. Paragraphs 8-13 As a critical remark, it should be noted that the regulation of civil protection is not yet completely uniform, since its rules can only be understood from the combined interpretation of the Hvt., the Vbö. and the Kat. However, the inclusion. in the Vbö. ensures that the common rules of all obligations and the uniform basic principles of the Vbö. can also be applied in other laws.
[245] Vbö. Paragraphs 14-18.
[246] Article 19

assuring the security of property, and performing humanitarian tasks;

- the provision of material and service conditions directly related to the defence and security of the country from non-state sources, where these are not available;
- disseminating information on threats that have occurred or are imminent to the organisations involved in defence activities;
- to carry out defence and federal military tasks and, to this end, train and prepare conscripts for military tasks and strengthen the defence capabilities of Defence Forces;
- participation in and training for the unarmed tasks of Defence Forces, and for unarmed tasks facilitating tasks of armed defence;
- to ensure an adequate workforce to maintain and restore the country's viability in times of war;
- to provide the information, reporting, record-keeping, availability and display required by law in relation to the above.

As a regulatory framework, the Vbö. also stipulates that certain obligations to be fulfilled personally, which were previously differentiated in sectoral regulations, cannot be imposed in parallel. This provision is necessary because, although the interests of defence and security can be pursued in many different ways, the duties and obligations that are linked to and must be performed by a single person must be kept within the world of reality. It is logical that a person who is performing military service somewhere cannot simultaneously perform an obligation defence labour elsewhere since a daily period of exclusive availability for the latter cannot be conceptually defined.

Another essential element is that there is no predefined "order of strength" between the individual obligations, no paramount defence and security obligations. The obligation, which, on the basis of a combined assessment of the circumstances giving rise to the order and the circumstances of the

obligor, leads to a higher degree of defence and security[247] . In order to ensure that such a balancing exercise, which is often not easy, is carried out on the basis of an appropriate set of criteria, the central body of the defence and security administration, the Defence Administration Office, is entitled to make recommendations to authorities entitled to issue an order.

The law also stipulates that defence and security obligations may only be imposed on if the state cannot ensure the fulfilment of the duties giving rise to the order in any other way, or if the fulfilment of the duties in any other way would entail a delay that would threaten to cause significant damage to defence and security interests or would require disproportionate expenditure. That requirement need not be enforced in periods of special legal order, in which case only the general requirements of necessity and proportionality and the legal limits set out in the Fundamental Law must be enforced in order to ensure that there is no substantial obstacle to the management of a crisis situation. Necessity and proportionality, on the other hand, impose a series of requirements on the measures introduced, which can be interpreted in the event of a Constitutional Court review, whereby the form of the obligation under scrutiny, which has been deemed inappropriate, disproportionate or unnecessary, may ultimately even be annulled but this interpretation may no longer include a test of expediency (in the light of the current state of scientific knowledge or the lack of information and the variability of situations).[248]

With regard to defence and security obligations, it should also be pointed out that the imposition of obligations, the adoption of measures to enforce them in the event of a legal obligation and the establishment of the corresponding obligation to compensate are subject to a legal remedy

[247] Art. 7 Paragraph (1).
[248] For a summary of the Constitutional Court's fundamental right limitation criteria, see CC Decision 3528/2021 (XII. 22.), on the assessment of the vaccination obligation.

procedure under rules of administrative litigation[249] , which, however, has no suspensory effect. This is because the public interest in immediate enforcement of such a type of administrative decision outweighs, when measured, the appealing aspect, given the consequences for the protection of the safety of life and property of citizens.

In connection with the system of obligations of the Vbö, it should also be mentioned that the act introduces the institution of defence and security fines[250] , which, in addition to the criminal offences related to defence, provides a possibility of applying sanctions against those who do not or do not adequately perform their obligations in terms of civil defence and economic as well as material services as defined in the Vbö. It will also be possible to sanction anyone who fails to fulfil an obligation relating to the preparation of national economy for defence and security purposes and the conduct of anyone who breaches the rules introduced under the Vbö. in the context of coordinated defence action. Establishing such a system of sanctions is also an expression of the fact that such conduct, which mainly takes the form of omission, is socially dangerous and, taken together, may jeopardise the security of the country. Where the seriousness of the harm caused or the threaten is greater, criminal sanctions may also be imposed,[251] and the conceptual content of the regulatory history also needed to be clarified taking effect as of 1 November 2022 in the light of the Vbö. Thus, the related substantive criminal law rules, by entering into force in simultaneously with the Vbö. and Hvt., have defined the specific obligations and prohibitions applicable in certain situations other than normal and the qualifying

[249] Appeals against decisions taken by the mayor concerning the fulfilment of protection and security obligations and the obligation to pay compensation are heard by the chairman of the territorial protection committee. In all other cases, no appeal may be lodged against the decision, but the judicial procedure shall be open in accordance with Act CL of 2016 on the General Administrative Procedure.
[250] The protection and security fine is dealt with in detail in Chapter X of this volume.
[251] See for example the Btk. Article 431 Any person who seriously breaches or evades his duty of protection and security in the economic and material services shall be punished for a felony by imprisonment for a term of one to five years.

circumstances resulting from the specific nature of the circumstances triggering.

2.1. Regulation of civil defence obligations

Civil defence is a system of tasks, means and measures regarding society as a whole, the aim of which is to save the lives of the population in the event of a disaster or armed conflict, ensure the conditions for survival and prepare the population to cope with the effects of the challenges arising and thus to create the conditions for survival[252] . In order to be able to carry out these tasks, it is necessary to ensure the availability of certain elements by means of a legal obligation. One way of achieving that is to impose a personal obligation of civil defence.

In a different approach as compared with the previous one, the Vbö. defines the civil defence obligation in line with the scope of the right to invoke the ninth amendment to the Fundamental Law[253] . Civil defence in daily practice has in recent years had a strong focus on disaster management, which is well reflected in the fact that following the repeal of the Civil Defence Act[254] , the main provisions were specified in Kat. before Vbö. taking effect.

Historically, the institutionalisation of civil defence has been classically linked to armed conflicts and air defence in the hinterland,[255] which has gradually been complemented by extensive disaster response. The reality of the Russia-Ukraine war has once again drawn attention to the vital importance of the classical professional content of civil defence.

[252] Kat. Article 3 Paragraph (20)
[253] Fundamental Law Article XXXI Paragraph (5) In order to perform national defence and disaster management tasks, an obligation of civil protection may be imposed on Hungarian citizens of age residing in Hungary, as defined in a cardinal law.
[254] Act XXXVII of 1996 on Civil Protection is no longer in force as of 1 January, 2012.
[255] For more information, see KOZÁK, Attila – HORNYACSEK, Húlia: The emergence and role of civil protection in the unified system of disaster management; in Bolyai Szemle (2012); pp. 157-184; and BERKI, Imre: A magyar civil protection historeti áttekintése; in Rendvédelem-történeti Füzetek 24. (2014), pp. 15-24 *RTF_35-36-37-38_0410_BERKI.pdf (mtak.hu)*

The law regulates the institution of the obligation of civil defence as a civic duty. In times of an armed conflict or disaster, the obligation of civil defence is a personal obligation to protect human life, material goods necessary for human subsistence, to promote the security of property as provided for by law and perform humanitarian tasks, and is imposed in the first instance on the mayor of the local authority of the place of residence or, failing that, of the place of residence of the person liable.

However, the Vbö. already prescribes for a weighting in the enforcement of the obligation: the performance of the civil defence obligations must be organised with priority of the performance of defence tasks in the event of an armed conflict. In accordance with the basic principle of the Vbö.[256], the Hvt. lists in detail the civil defence tasks[257] for which this type of priority is to be enforced.

[256] Section 1 The defence and security of Hungary is a national matter on which the survival and development of the nation, the enforcement of the rights of the community and of individuals are based, therefore the legal provisions related to the maintenance and development of the defence and security of the Hungarian nation shall be determined in the light of this Act.

[257] Hvt. Article 45 Paragraph (1) During the period of armed conflicts, it is considered a civil protection task within the scope of application of Article 8 Paragraph (4) of the Act on the Protection of the Constitution:
a) the alarm,
b) evacuation and reception,
c) the establishment, maintenance and operation of shelters,
d) the development and application of blackout rules,
e) the rescue and transport of the population and of the national economic goods necessary for the supply of the population,
f) first aid, spiritual care,
g) fire fighting,
(h) the identification of hazardous or contaminated sites,
(i) chemical and radiological detection, chemical and radiological decontamination, decontamination and similar precautions,
j) emergency accommodation and care,
(k) all emergency measures to restore and maintain order in areas affected by military operations,
l) contributing to the maintenance and rapid restoration to working order of infrastructures providing essential productive capacities or services, or essential for the supply of the population,
m) the epidemiological, public health, memorial and non-urgent administrative tasks,

Civil defence obligation comprises four sub-obligations, the combined and interdependent application of which enables civil defence tasks to be carried out effectively and efficiently.

The *first sub-obligation* is information obligation. The purpose of this is to ensure that public authorities (more specifically, the bodies of the National Directorate General for Civil Defence) and the mayors have the necessary data to allocate the persons concerned by the obligation to the civil defence organisation, have data on the occupation and qualifications of potential obligated persons for the purpose of carrying out the tasks related to the fulfilment of the obligations of civil defence. That will provide the basis for preparation, prior planning and assignment of possible tasks, helping avoide unnecessary involvement of ad hoc personnel in defence tasks with aptitudes, skills, abilities and qualifications that do not match the challenge at hand.

The data service primarily uses the data provided by the obligor's employer, the records of military headquarters and the personal data and address register. The person concerned may be called upon by the mayor to provide data only if the required data are not available on the basis of the information provided by the data providers listed.

The *second sub-obligation* is the obligation of notification. The purpose of this obligation is to ensure that if there is a change in the details or circumstances of the designated person in relation to civil defence tasks or a disqualifying factor or reason for exemption arises, the civil defence organisation is informed. This is to ensure that in a crisis situation, a notification can actually take place or, if an obstacle is notified in advance which has a significant impact on the performance of the service, to avoid unnecessary notification or call-up which would delay a defence mission. However, notification is not a general obligation but is specifically linked

(n) any other additional activities necessary to carry out the tasks under points (a) to (m), including, inter alia, information, planning and organisation, and the maintenance and provision of stocks.
(2) Professional disaster management bodies and civil protection organisations shall be trained and prepared to perform civil protection tasks during armed conflicts.

to the obligation to be on duty, from which the mayor may grant release on justified request. The reason for the exemption must be notified and justified at least three days before the date on which the duty is to be performed. Failing that, the service shall be compulsory.

There is also an obligation to notify when a member of a civil defence organisation is called for training and exercise if he or she is prevented from participating. In duly justified cases, the mayor may grant a postponement or exemption on the basis of a notification by the person concerned.

The *third sub-obligation* is the obligation to appear. In the case of the obligor, that is the actual personal appearance ordered by the mayor of the place where the obligor resides or, failing that, the place where he is domiciled. A member of a civil defence organisation may be assigned to training and exercises and may also be required to perform service, which is accompanied by an obligation to appear, and must appear at the place and time indicated in the call[258] .

An important rule which is relevant to all obligations is that the Vbö. exhaustively specifies the cases in which a person is exempt from the obligation[259] .

Exemption is established from civil defence obligation by

a) being a minor (under the age of 18),

(b) being physically or mentally incapable of performing it,

c) being permanently or temporarily solely responsible for the care of at least one direct descendent or ascendant in his/her household, spouse, brother or sister and would be unable to do so in case of fulfilling their defence and security obligation,

d) in one's own household

[258] Vbö. Articles 11-12
[259] Article 10 Paragraph (1) of the Vbö

da) being solely responsible for the maintenance of at least one minor child by blood, adopted or foster child, including a foster child whom the obligor has maintained in his or her own household for at least one year or whom the guardianship authority has decided to appoint as a foster parent or child protection foster parent and who would be unable to fulfil his or her duties of care in case of performing defence and security obligations,

(db) provides maintenance of three or more minor children by blood, adoption, foster care or foster care, including foster children who have been dependent on the obligor for at least one year or who are fostered by the guardianship authority as foster children or foster children in child protection,

(e) being pregnant, from the date of stating her pregnancy,

f) reaching the age of retirement age applicable to him or her,

(g) being subject to a guardianship order which partially or totally restricts his or her capacity to act.

In the case of persons falling into the categories above, there is no civil defence obligation. In their case, a circumstance relating to their person constitutes an obstacle to their participation in defence activities to such a degree that it would be objectively impossible, would impose a disproportionate burden or would be likely to create a new crisis situation, and the advantages of service cannot be compared with the disadvantage or risk of disadvantage.

A further group is those natural persons who are obliged to participate in civil defence tasks but who fulfil their civil defence obligations by carrying out their duties through exercising their public official duties[260] . They include:

[260] Article 10 Paragraph (2) of the Vbö.

a) the Member of Parliament and the nationality advocate,

b) the Member of the European Parliament,

c) senior professional managers, government officials, civil servants and civil servants with managerial responsibilities and those performing disaster management tasks in accordance with their duties,

d) the notary,

e) the Constitutional Judge and the staff of the Constitutional Court, the judge, the prosecutor, the notary public, the bailiff,

f) actual members of the Defence Forces, members of law enforcement agencies, national security services and the Parliamentary Guard, employees of these agencies,

(g) a government official of a public health administration body,

h) in-patient, out-patient and primary care doctors and qualified specialists,

i) an employee of the state ambulance service, an employee of a patient transport organisation,

j) volunteer, establishment and municipal firefighters on standby duty, members of volunteer firefighters' associations carrying out professional activities,

(k) a member of a sectoral defence organisation with a public service mission,

l) the staff of the operator of the establishments performing public utility functions,

m) priests, ministers, rabbis with a higher professional education and practising their profession,

n) the personnel of the organisation providing air navigation service,

o) a critical employee of a critical system element.

It can be seen that removing these staff from their original public role would be a much greater disadvantage than the advantage arising from involving them personally in the service. In this way, this legal instrument is similar to the instrument of leaving in original position[261], whereby persons in certain designated posts are exempted from being called up for military service in a place other than their place of employment, in order to ensure that the defence of the country is not only maintained from a military point of view.

In addition to the above, the Vbö. also provides a possibility for the mayor to grant exemption from civil defence obligations, at the request of the individual, for a period of up to one year, assuming a person who, due to his/her personal situation, work, family or social obligations, could not perform their civil defence service or would be unable to do so only at a disproportionate personal cost compared to the benefit that could be gained by performing the civil defence service[262] .

The fourth sub-obligation of the civil defence obligation is the obligation to perform civil defence services, in other words, the obligation to render service. This part of the obligation is essentially which is popularly known as "civilian service obligation". It means a kind of participation in defence work. The duty of civil defence and the assignment to rescue operations requiring immediate intervention in the municipality are ordered by the mayor of the municipality where the person concerned resides. During a special legal order, a member of the civil defence organisation shall be available for continuous civil defence service without time limitation, while outwith a special legal period, temporary civil defence service may be ordered for a period not exceeding 15 days

[261] Hvt. Article 3 Point 22) ordering: a procedure carried out in connection with a post or a job (hereinafter together referred to as "job"), in the course of which persons designated by the body which has been ordered by law or by an official decision are entered on the ordering list and may not be called up by the military administration for a place of employment other than their job

[262] Article 10 Paragraph (3) of the Vbö.

at a time. The government, by decree, the minister responsible for disaster management, the chairman of the regional or local defence committee, and the mayor or the mayor general (mayor of Budapest) may order an immediate performance of temporary civil defence service.

Article 12 of Kat. stipulates that the obligor, in the context of the service, must appear at the place and time specified in the decision and carry out the civil defence tasks assigned to him. For the duration of the period of service, the Vbö. establishes a special legal relationship with the obligor, under which he is obliged to carry out the instructions received, unless it would constitute a criminal offence. The regulation also stipulates, as does the military order/command system[263] , that the orders must not result in causeless employment of subordinates or in violation of their human dignity. A sharply different element from the provisions of military orders is that an order issued in the context of the civil defence service must not result in direct endangerment of the life and physical integrity of the person subject to it.

A citizen with a special status shall not be obliged to be available and work in his or her original post during the period of training, exercise and temporary civil defence duties. For this period, he shall be entitled to an absence allowance or, if there is none, to the corresponding remuneration, and, in the absence of an employment relationship, to the pro rata temporis part of the statutory minimum wage. During the period of secondment, the person concerned shall also receive free of charge working equipment, supplies, clothing and benefits in kind, and shall be entitled to reimbursement of travel expenses by the ordering officer and exemption from payment of local taxes, taking into account his or her official duties.

A specific element of the legal relationship is the oath, which is required by law[264] .

[263] See Hvt. Articles 78-79.
[264] See Article 13 Paragraph (8) of the Vbö. and Annex 2 of Government Decree 402/2022 (X. 24.) on the civil defence obligation

With regard to civil defence tasks, it should also be pointed out that the special activities that are considered civil defence tasks during armed conflicts are defined by the Hvt., Article 45 specifies that professional disaster management bodies and civil defence organisations must be prepared to perform these tasks.

2.2. Regulation of economic and material service obligations

This obligation was fragmented in the national defence and disaster management legislation before the Vbö. coming into force, and it was the defence and security reform which opened the way for unification.

The purpose of economic and material services is to provide the material and service conditions for the performance of tasks directly related to the defence and security of the country, as defined by law, from non-state sources, if they cannot be provided in any other way.[265]

Everyone can be obliged to provide economic and material services for the performance of national defence and disaster management tasks,[266] which does not always require the promulgation of a special legal order.

In the peacetime functioning of a country and its polity, the use of resources, the production of goods and the accumulation of stocks are primarily determined by market conditions. In a situation other than peace, particularly if it is unexpected, whether it be a disaster, an armed conflict or an imminent threat of armed conflict, the number and often the nature of services, technical equipment or property required is substantially greater and different than in normal circumstances. In such cases, the defence and security interests of the country require a rapid mobilisation and use of non-state resources, coupled with a fair compensation system. Compensation for material damage caused by the performance of the service shall be provided in accordance with the rules

[265] Article 14 of the Vbö.
[266] Article XXXI Paragraph (6) of the Fundamental Law

governing measures for the preparation of the national economy for defence and security purposes.[267]

An economic and material service may be an obligation to provide a specific economic and material service or to tolerate the use of a service, to refrain from an activity, to carry out preparatory activities for its use or to provide information necessary for the planning of its use. These are collectively referred to as "services".[268]

The Vbö. specifies the cases when the services may be required. However, the list is not closed, and the introduction of an exemplary list with the phrase "in particular" was with an explicit aim to allow for flexibility.[269] . The list is nevertheless extremely broad, covering areas ranging from the availability of material goods and services necessary for the operation of defence and security organisations, the functioning of the national economy, government and public administration, the provision of civil defence and health emergency services, to the supply of allied armed forces.

Exemptions from economic and material service obligations are granted to certain entities and persons by law, or may be granted upon request, in order to ensure that the country's functioning remains sustainable and that the basic requirements of national resilience[270] can be met. Accordingly:

> *"Vbö. Article 16 Exempt from service:*
>
> *a) the National Assembly, the Constitutional Court, the Office of the President of the Republic, the State Audit Office, the Office of the Commissioner for Fundamental Rights, the Ministries, the National Office of the Judiciary, the Curia, the Office of the Attorney General, the Office of the National Assembly, the*

[267] Vbö. Articles 35-41.
[268] It is worth noting that this kind of widespread simplifying formulation, also used by the legislation, sometimes causes confusion, since the performance of an economic and material service obligation can also be the provision of a certain service, e.g. laundry, catering, etc., i.e. here the "service" is part of the service...
[269] See Article 14 Paragraph (3)
[270] See Chapter V

National Bank of Hungary and its foundations, the autonomous state administration bodies, and the independent regulatory bodies,

b) defence organisations under the Defence Act and defence and security organisations,

c) in addition to point (a), the administrative, judicial and prosecutorial authorities, to the extent necessary for the performance of their basic tasks and their defence and security duties,

d) religious communities in respect of those things and rights which are directly related to the exercise of their religious functions,

e) the parties represented in Parliament, to the extent necessary for the parliamentary representation activity,

f) national workers' and employers' representative organisations and associations of representative organisations in respect of such matters and rights as are essential for the exercise of their representative functions,

g) organisations providing public passenger transport services and freight transport services, including air passenger transport services and air freight transport services, which are established for the purpose of carrying out such activities or which carry out such activities on the basis of a contract or a statutory designation, to the extent necessary to maintain essential traffic and transport, and organisations providing air navigation services,

h) natural or legal persons providing public services or public utilities, in particular electricity, water, gas, district heating, water supply, municipal waste disposal and the establishments providing for their operation, to the extent indispensable for the

performance of their functions, including the associated protection and safety areas,

i) operators of critical systems and organisations providing services essential for their operation, up to the assets and resources necessary for the services related to the operation of critical system elements."

In addition to the above, only persons engaged in production and service activities essential for the subsistence of the population may be exempted on request.

In order to enforce economic and material service obligations, it is essential that the state maintains its own and uses non-state databases from which the data necessary for planning the service and preparing for defence can be extracted. However, it is also possible to designate a service in advance without a database if public authorities obtain information from other sources that a capability that cannot be provided in any other way is available in this way. It is also possible for public authorities to obtain appropriate information for basic planning by means of an obligation to provide data, as well as to require a designated service provider to undertake some additional preparatory activities in order to assure access as quickly as possible[271] .

It is important to note that it is not always the same requisitioning authority which is entitled to decide on the use of a service in the context of economic and material service obligations. The receiving authority may be the Government or, by delegation of the Government, the Minister responsible for the activity in question, the chairman of the territorial defence committee, the mayor or the head of the sectoral administration body responsible for defence and security administration,

[271] Examples include: notifying changes in the data of property and movable property pre-designated for use and keeping it in a condition suitable for use, requiring the necessary reserves and stocks to be built up, carrying out preparatory activities necessary for the performance of the service, or temporary use necessary for the operation of defence and security organisations and the defence administration.

or, in the event of war, any commander in the military organisation. The detailed rules on who can make these decisions and in what situation are set out in the implementing decree of the Vbö. [272] [273] To summarise, it is worth noting that, as a general rule, the mayor is responsible for disaster management (on the basis of a proposal from the local head of the professional disaster management service or the comes[274]) and the regional defence committee (real estate, services) or the head of the military supplementation and recruitment centre (technical equipment), the Government or the designated minister[275] is likely to enter this circle only in the event of national scale or exceptional importance of the situation, just as commanders of military organisations only enter the role of authority in exceptional circumstances, in a state of war.

The Vbö. also provides a possibility that, similarly to civil defence obligations, the obligated parties may be exempted from the service in certain cases. In order to ensure that exemptions granted by individual decisions do not jeopardise defence objectives, the central body of defence and security administration is authorised to review exemptions on the basis of aggregated reports from requisitioning authorities.

Taking into account the fact that service users also carry out prior planning for a possible crisis, they are aware of what their needs might be in the event of a crisis. In many cases, it is advisable to contract with owners or service providers for future use during the crisis-free period. The property, services and technical equipment contracted in this way cannot be designated by a requisitioning authority for other tasks.

[272] 428/2022 (X. 28.) Government Decree on the rules of economic and material service obligations

[273] Use for defence purposes is the taking of possession of designated immovable property, technical equipment, other movable property or the use of economic services ordered by the user for the purpose of satisfying defence interests, following the initiation of the declaration of a state of war by the Government, during a state of war, a defence crisis, an unexpected attack or in order to fulfil an allied obligation.

[274] The latin expression of 'comes' (used hisorically in Hungarian) is equivalent to a 'sheriff'.

[275] For example, in the case of domestic cooperation with allied armed forces, the Minister of Defence orders the use of armed forces for their supply.

Where, in a state of war or state of emergency, there is a serious and imminent threat of damage to defence and security interests because of the time required for action by the authority ordering the service, the head of the sectoral administration body responsible for defence and security management or, in a state of war, the commander of the military organisation may directly order the use of assets directly necessary for defence.

2.3. Reporting obligations for defence and security purposes

The obligation to notify for defence and security purposes is regulated in Article 19 of the Vbö. This is a so-called *lex imperfecta,* which defines an obligation without imposing an absolute sanction but which, by creating it, can be used to guide society towards expected behaviour.

The purpose of the general duty to notify, which is imposed on everyone, is to ensure that the State's defence and decision-making bodies are informed as quickly as possible of acts likely to cause serious and violent disturbances to public order and security, disasters that have occurred or imminent threats of such disasters.

In addition to the above, during the period of coordinated defence activities, the initiation of a state of war or a state of emergency, or during a special legal order, the obligation to report is extended to cover acts seriously damaging or endangering the national defence interests, acts seriously damaging the order of the state border, malfunctioning or damage to vital systems or imminent threats thereof, which significantly endanger the safety of life and property. .

In order to enable citizens to fulfil the obligation to notify without unnecessary administrative obstacles, they can do so at any public body providing essentially on-call services.[276] These bodies are subsequently

[276] These include the emergency services (112), any police, defence or professional disaster management organisation, regional government administrations, municipal fire brigades, mayor's offices or joint municipal offices.

obliged to notify the competent body and, if necessary, the body responsible for operating the governmental surveillance system.

3. Defence and security obligations based primarily on the Defence Act (Hvt.)

In relation to the two types of national defence obligations primarily regulated by the Hvt., Article 6 of the Vbö. reiterates the common constitutional limitation, namely that both armed or unarmed military service and national defence work obligations are limited to the period of the actual state of war. The formulation of the two obligations under Article XXXI of the Fundamental Law, however, implies different degrees of possibility-quality: while national defence labour obligation in principle, allows for the end of a state of war without its imposition, military service obligation is valid without a specific decision linked to the fact of declaration but at most does not extend to individual conscripts, because of certain discretionary reasons regulated by an act or government decree.

It can be concluded that the obligation to serve in the military and the obligation to work for the national defence are linked to a declared state of war, which is a special quality when comparing state of war with the other two special legal orders: in a state of emergency or in a state of danger, those obligations cannot be constitutionally activated, thus - besides the possibility of the Government to introduce a state of emergency - they constitute an additional argument against the alternative of the unification of special legal order proposed by Professor Lóránt Csink.[277]

Paragraph (1) of Section 7 of Vbö., in connection with the specific forms of civil defence obligation with the same time limit, states that only one

[277] CSINK, Lóránt: When should the legal order be special? Iustum Aequum Salutare 2017/4. *https://ias.jak.ppke.hu/20174sz/01b_Csink_IAS_2017_4.pdf* 16.

of the three potentially simultaneously enforceable obligations can be activated for the same person.

Considering that the concurrence of military service obligation, civil defence obligation and national defence labour obligation can only arise in a state of war, the applicability of the cited provision may seem somewhat idealistic since the conditions for military service call-up are primarily determined by constitutional conditions and the Hvt. The question of the balance between civil defence and national defence labour obligations remains, in fact, a question of discretion since the call-up for military service is itself the result of a balancing between military expediency, constitutional constraints and individual choices.

Accordingly, for example, in the absence of military conscription for women, ladies with military training cannot be called up but can be constitutionally reactivated only on the basis of voluntary application. In the case of men, however, the justification of the conscientious reason for the alternative to military service without arms, as mentioned in the Constitution, must be weighed against the training background that justifies military selection, which may, in certain circumstances, even in wartime, lead to a dispreference for a narrowly defined, combatant-focused military interest, especially as a sanction in the context of ex post human rights reviewability in the case of a convert.[278]

A balance between the interests of defence and security, in particular the circumstances giving rise to the order and the circumstances of the person subject to the order, can thus be seen primarily in the fact that the Hvt. only provides for the primary (absolute, e.g. age) conditions for military

[278] For an assessment of the previous case law of the European Court of Human Rights on defence obligations, see Szabolcs TILL, Asterix and the European organisation of working time; Katonai Jogi és Hadijogi Szemle 2020/1. 159-213. *https://epa.oszk.hu/02500/02511/00012/pdf/EPA02511_katonai_jogi_szemle_2020_1_159-213.pdf* The ECHR has recently explicitly condemned the lack of a civilian alternative to military service in the case of Lithuania, see ECHR Factsheet - Conscientious objection *https://www.echr.coe.int/documents/fs_conscientious_objection_eng.pdf* 7 and ECHR 2nd Chamber Judgment of 7 June 2022, No 51914/19 in TELIATNIKOV v. LITHUANIA. *https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-217607%22]}*

service call-up, the list of exemption circumstances validating the discretionary criteria - in contrast to the former Defence Act, which was based on the earlier training hypothesis[279] applicable to a preventive defence situation - is already regulated in Article 20 of *Government Decree 614/2022 (XII/29) on the implementation of certain provisions of the Act on Defence and the Hungarian Defence Forces.*

In contrast to that, however, several elements of the formerly governmental regulation of the institutional system of leaving in original position[280] have been incorporated into the Hvt. as a supplementary rule to the changed statutory concept. This includes a change in the concept itself: according to the new definition in Article 3, point 22 of Hvt., the order is no longer an obstacle to recruitment but a prohibition of removal from the place of original employment: it does not, however, prevent the person concerned from carrying out his activities in the former place of employment with military status consequences, including the threat of military criminal sanctions. Chapter 23 and Annex 1 to the Hvt. divide the bodies and organisations involved into three categories, with specific provisions for national security organisations, where the gradation is determined by the completeness of the persons involved, due to a competing constitutional interest, or by the degree of separation of the organisations in relation to their defence tasks, or by the way in which they are designated by law or by the authorities.

[279] For a retrospective assessment of the situation of preventive defence see Pál KÁDÁR, Reform of the special legal order system; Katonai Jogi és Hadijogi Szemle 2022/3. 65-90. *https://epa.hu/02500/02511/00022/pdf/EPA02511_katonai_jogi_szemle_2022_3.pdf* especially 76-79.

[280] The Hvt. according to Article 3 point22., the term is defined as "the procedure carried out in connection with a post or a job, in which persons designated by the body which has been ordered by law or by an official decision are entered on the order register and may not be called up by the military administration for a place of employment other than their job". In principle, therefore, this changed concept does not prevent the person concerned from carrying out his activity in the same place and with the same content, but in a military capacity and under threat of disciplinary/criminal sanctions. The decision as to the actual method of detention, whether civilian or military, may be a further element of consideration of the necessity and proportionality of the martial status.

From the point of view of the comparison of civil defence obligations and national defence labour obligation, the purpose of working activities of a predominantly similar nature differs: while the former is a public interest activity responding to the changed emphasis on ensuring subsistence conditions, the latter - even with the uncertainties resulting from a partly incomplete regulation - can be modelled in its permanent subtype with tied labour management and in its temporary subtype of fortification works for national defence purposes. In that respect, the consideration of the balancing of different objectives, which is separated from the military aspect, and the introduction of additional consideration criteria by the central defence and security administration, can be interpreted as a correction of the narrowly military aspect. All these subjects related to national defence obligations are dealt with in detail in Chapter III of Hvt..

3.1. Military service

The regulatory space determined by Article XXXI Paragraph (3) of the Fundamental Law is primarily filled with content by the Hvt., with the role of the implementing government decree having changed compared to previous legislation. Determinations of the Fundamental Law related to military service:

- being bound by a declared state of war (time),
- the requirement to be resident in Hungary (a restrictive criterion, compared to which actual residence in Hungary is not a criterion to be considered),
- adulthood (relative formulation of the lower limit of age 18, effectively the exclusion of minors, who are not effectively affected by the age of majority through marriage because of the prohibition of child soldiers),
- Hungarian nationality (the actual place of residence may be relevant due to multiple nationality as a consequence of *Act III of 2002 on the promulgation of the European Convention on*

Nationality, signed in the framework of the Council of Europe on 6 November 1997[281]), and

- the requirement of male biological sex (this is primarily intended to exempt women but despite the immutability of birth sex, it may result in a conflict of legal fact and identity in the register due to previous interference).

In view of the identity-determining role of freedom of conscience and religion, the Fundamental Law includes an alternative to armed military service, the detailed rules for the authorisation and performance of which are also adopted in the Hvt. but the alternative of civilian service - like absolute refusal - is not a constitutionally permissible option since the expiry of the Constitution. The central element of the system of rules relating to the obligation to serve is Article 19 Paragraph (2) of the Hvt., which provides that

> *"Military service is a general obligation but the number and composition of the personnel eligible for military service shall be called up for military service within the limits set by Parliament, according to the professional military needs of the Defence Forces."*

The wording is intended to capture the transition between the general quality of the obligation and the focus of the selection: although the possibility of calling up all men who meet the statutory limits must be considered, the quantity and quality of the selection are determined by the professional needs of the armed forces, while the number of men to be recruited is variable. That formulation therefore allows the automaticity of the state of war, declared as one of the possible responses to challenges, to be activated in a way that is ultimately weighed up in

[281] This Convention regulates military obligations in the case of multiple nationality. It should be noted that the order for mobilisation under Article 21(3)(g) of the Convention overrides the principles of exemption and set-off under Article 21, i.e. in the event of mobilisation by any State Party, the Convention provisions on military obligations are not binding.

terms of necessity and proportionality. Conversely, it also allows for the possibility of reassessing the sustainability of privileges and immunities in the event of a deterioration of the situation, in line with the general nature of special legal order, with a view to the retroactive activation of other personal defence obligations.

The consequence of a military aspect consideration is primarily that the personnel affected by the obligation is first selected from among the personnel with the specificities corresponding to various military needs, which aspect is directly reflected in the Hvt. with the result of two possible upper age limits according to the military record, as set out in Article 37 Paragraph (1): while an untrained conscript (formerly a potential conscript) is subject to possibly being called up in a state of war until the end of the calendar year in which he reaches the age of 50, a trained conscript with a military record is subject to possibly being called up until the age of retirement, which currently means an additional fifteen years.

Article 3 of the Hvt. in this context actually lays down the concept of a trained conscript in point 20, compared to which the concept of an untrained conscript is only a negative definition. On this basis, the classification as a trained conscript effectively results in a period of ten years of basic military training or basic training, from the date of termination or cessation of military service until the end of the tenth year following the end of the period of service, if the upper age limit has not been reached. The absolute limit is therefore the retirement age and the relative limit is the ten-year interval.

However, it should also be pointed out that an existence of basic military training or preparation leads to a reclassification from the category of untrained conscripts, so that, for example, the completion of voluntary military service in the reserve is eligible for the activation of the ten-year interval,[282] for which the relevant date is not the date of basic training or

[282] However, the presumption of ten years of training is only linked to some form of military service: the end date of the period of professional or contractual service at a law

preparation but the date of termination of military service: the date of termination of service on 31 December after the age of 50 is thus replaced by the expiry of the ten-year period.

However, under Article XXXI Paragraph (3) of the Fundamental Law, this can only apply to men who meet the additional conditions. Though women may apply for service on the basis of a voluntary application but there is no compulsory form for them, and any military training they may have is irrelevant. In other words, even in a state of war, women cannot be constitutionally obliged to serve without amending Article XXXI of the Fundamental Law, and their recourse to military service can only take the form of a civil defence obligation or a national defence labour obligation.[283]

However, in exceptional cases, the introduction of compulsory military service also results in a situation of obligation for a group of women, with reference to their previous consent: in the case of Article 3 Paragraph (2)

enforcement agency or in the professional staff of a civilian national security service is irrelevant in this respect, despite the possibility of continued service with possible transfer, and despite any deeper training that may be relevant from a military point of view. The period of ten years in the police service of a person transferred from the military to the police fire service shall be reduced, or, conversely, shall not even begin to be counted.

[283] In connection with the related consideration of positive discrimination aspects based on the traditional understanding of gender roles, which was confirmed in the period of the Constitution, see in more detail the Explanatory Memorandum of CC Decision 46/1994 (X. 21.) , paragraph II/6.
https://net.jogtar.hu/jogszabaly?docid=994H0046.AB&mahu=1)
"According to the Constitutional Court, the abolition of women's military service does not in itself mean that the law is unconstitutionally discriminatory with regard to a constitutionally enshrined civic duty. Indeed, Article 70/H of the Constitution provides for the obligation of citizens to defend their national defence. However, the legislature's taking into account the specific characteristics of the female sex and the historical tradition that warfare is the responsibility of the male sex does not infringe the prohibition of discrimination laid down in Article 70/A(1) of the Constitution. In essence, this is what the Defence Act has done, since, while limiting the military obligation to men, it has not exempted the female sex from fulfilling other elements of the defence obligation.
Such positive discrimination against women is therefore not in violation of Article 66 of the Constitution, and the Constitutional Court rejected the petition for a declaration to that effect."

of *Act CXIV of 2018 on the Status of Defence (civilian) Employees,* since the Act coming into force , the possibility has been given that a defence employee will be transferred to the actual military personnel, regardless of his or her gender, due to the automatic starting state of compulsory military service.[284]. The legislator, who compared the content of this provision with the possibility of the cessation of preventive defence status in the review of special legal orders, was faced with the dilemma while preparing *Act LXIII of 2022 amending certain Acts relating to the functioning of the Hungarian Defence Forces,* which did not allow for peacetime military training for civilian defence personnel. At the same time, the conversion of their status in a state of war would have automatically activated their military status, i.e. made them a military target, under the old rules, even without military training. In order to ensure their survival, the possibility of peace-time training therefore had to be opened up for a group of defence personnel that was heavily populated by women. However, the amendment of the regulation is open in that it does not specify the depth of the period of peace time training: it could, for example, include the completion of full basic training for defence personnel, as well as the completion of a 'dry run' level of weapons proficiency without live firing. These two alternatives weigh differently the requirements of survival in wartime and peacetime dangerousness: implementing regulations need to weigh both aspects, resulting in a range of interpretations that can be evaluated from the perspective of men in terms of the quality of trained conscripts.

For men in general, however, the withdrawal of the previous preventive defence status, which was essentially linked to the abolition of peacetime

[284] "Article 3 (1) In his/her appointment, a member of the defence staff shall undertake to perform the public services falling within the remit of the defence organisation and to participate in the mandatory annual defence training courses for defence staff, as specified in the decree of the Minister responsible for defence (...).
(2) In addition to the provisions of paragraph (1), a member of the defence staff may volunteer to perform actual military service after the introduction of military service. In such a case, in addition to the further training provided for in paragraph 1, the member of the defence staff shall also be required to undergo the training or preparation necessary for military service."

conscription and was primarily intended as a period of preparation, had additional consequences for conscription. Certain procedures, which had previously been planned as special legal preparations and which were predominantly administrative, also had to be rescheduled on the hypothetical timeline to periods preceding the decision to declare a state of war. In that respect, the period between the Government's initiation of the declaration of state of war and the Parliament's decision on its declaration, which in extreme cases may last up to 60 days, as provided for in Article 54 of the Fundamental Law, may be of relevance:[285] during that period, military records must be updated and all preparatory acts can be carried out, with the exception of actual calling up for service.

In order to distinguish the subjects, the Hvt. introduces a new category of *conscripted* on the basis of Article 3, points 7 and 8, in addition to the previously commonly used category of *conscript,* where the latter term means compliance with the restrictive criteria under the Fundamental Law (Hungarian residence, age of adulthood, Hungarian citizenship and male fixed sex), practically adopting the former concept of a potential conscript, while the conscripted means a conscript called up for actual military service in a state of war. The date of entry into the scope of the narrower concept is not linked to the date of call-up per se but to the date of receipt by the representative of a defence organisation designated as the place of service from the military administration pursuant to Article 39 Paragraph (6) of the Hvt: from that date the military service of the person liable for military service begins.

Hvt. Chapter III summarises the system of defence obligations and exemptions in Subtitles 13-29. In doing so, the provisions of Subtitle13 define military service as a summary of the military service obligation under the Fundamental Law and the additional obligations, namely the

[285] From the point of view of the realisation of that condition, the possibility of a substitution power for the President of the Republic can be excluded: it is not a question of obstructing Parliament, but merely of a probable failure of the necessary large two-thirds vote, when the focus is on informal persuasion of MPs who balance the scales, while ensuring the presence of votes of the governing party that are certainly in favour.

obligations of providing information, notification and attendance, with paragraph 4 limiting the possibility of conscription to the period following the initiation of a state of war by the Government but only to the turn of the day following the declaration of the state of war, thus ensuring the consistency of the availability of conscripts without delay from the date of declaration and the condition of service under the Fundamental Law.

Subtitles 14 to 16 of Hvt. define the interdependent process of the three additional obligations, starting from the request of the military administration to the conscript who has not reached the maximum age, differentiated according to the quality of the conscript, trained or not, in order to clarify the data relevant for the performance of the service, ultimately to identify the suitability for military service and the planning of the service.

In principle, the main rule of the *obligation of providing information* under Article 20 may be activated in peacetime at the discretion of the military administration, except that, according to paragraph (2), the initiation of a declaration of a state of war and the activation of a national defence crisis situation will influence the direction of the obligation of providing information, depending on the assessment of external military challenges. However, the additional obligation to provide information in the direction of the district office is also subject to a request for information from the office and is not an automatic consequence of any governmental decision to manage the crisis, specified as a condition.

Subtitle 15 on the *obligation of providing information* serves as the main rule for updating the data covered by the obligation of providing data, also on request. Article 21 paragraph (4), however, makes the obligation to notify the military administrative body of the changes to military obligations not covered by the exemption unconditional and automatic, as a result of the initiation of a state of war or the declaration of a state of national defence crisis situation, also affecting documents attesting to any changes.

Following the establishment and updating of the database, the *obligation to appear in* accordance with Subtitle 16, which also covers the medical examinations related to fitness to practise and the handover of necessary documents, and - with the exception of the impediment under Article 23 - in the case of self-inflicted injuries, may also be enforced by police summons in accordance with Article 22 paragraph (4) in respect of the place and time specified. In the latter case, when balancing police action against the threat of criminal prosecution, the primary concern is to ensure that the minor resistance of the person concerned to his obligation does not result in a criminalised situation: the act only becomes a criminal offence if it makes military service actually impossible.

Subtitles 17-19 contain detailed procedures of screening for fitness for military service in order to ensure that persons with grounds of manifest unfitness for military service under Article 26 paragraph (1) can be excluded as soon as possible from the activation of military service, reducing both the administrative burden on the persons concerned and the case load of military administration at critical times. As regards the possibility of prior planning for military service, a conscript who has been exempted on the basis of Article 26 paragraph (2) on the grounds of serious disability should be informed upon notification of the decision, as he is no longer subject to the planning process for further service. In contrast, under Article 24, the special attention of the military establishment for trained conscripts is maintained, with only the consequence of a substantial impairment of fitness being included in the database.

For the purposes of planning for military service, the nomination of a trained conscript for military service and the recording of the date and place of his call-up on the basis of his suitability, personal qualities and qualifications shall, as a general rule, be carried out in accordance with a simplified procedure under Articles 29-30, without personal appearance, unless the person concerned requests planning with personal appearance, for example to allow unarmed military service.

The availability of an option of unarmed military service under Article XXXI Paragraph (3) of the Fundamental Law is a constitutionally important element of the military service obligation. While Article 35 (1) of the Hvt. states that *"the purpose of armed military service is to carry out national defence and federal military tasks and, to this end, to train and prepare conscripts for military tasks and to strengthen the defence capabilities of the Defence Forces"*, unarmed military service regulated in paragraph (2) is of military significance only in a supplementary, albeit potentially life-saving, sense. The purpose of this service is *'to contribute to and provide the necessary training for the unarmed tasks of the armed forces without the use of weapons and to assist their armed tasks',* which may include activities related to military health care, even in the quality of battlefield lifesaving.

Thus, accepting and allowing unarmed service does not automatically result in being kept away from dangerous activities of military forces but targeted preparedness increases the chances of survival. Overall, the aim of the legislation is to ensure that the institutional system provides an alternative for those affected by a serious conflict of conscience, and the possibility of 'getting away' with military service in a state of war is not even considered. Proportionate public cost is also a consideration here: in the absence of a conflict of conscience, service without arms is not a matter of preference, as no preference for convenience can be included in the criteria of civic duty imposed in order to meet the security challenge involving the state, unlike peacetime military service.

As a consequence, the system of obstacles to conscription under Article 20 of *Government Decree 614/2022 (XII. 29.) on the implementation of certain provisions of the Act on Defence and the Hungarian Defence Forces* can be interpreted in a practically uniform manner with regard to armed and unarmed military service, since the issue of unarmed service appears only in the form of a temporary exemption for the period of the assessment. In the case of military service, the exemption is only valid for a temporary period of absence. A further restrictive rule under Article 36 paragraph (4) of the Hvt. is that, if unarmed military service is

authorised, the person concerned must be called up within fifteen days in order to commence such service. The rule does not, however, provide an immediate call-up or a possible turnaround date, thus allowing some leeway in terms of scheduling.

To avoid abstract authorisation procedures, Article 42 paragraph (1) of the Hvt. limits the initiation of opting for unarmed service to the period of planning for military service. According to Subtitle 27, the procedures for permitting unarmed military service shall in any case include, in addition to a system of remedies to ensure the speedy conduct of the procedure, a prohibition on the use of armed service in the meantime (as a bar to any non-remediable breach of rights) and a presumption of the seriousness of the invocation of a conflict of conscience, placing the burden of proof on the military assessment system in accordance with Article 43 paragraphs (2) and (3). The obligation to interpret conscientious objection broadly has therefore not changed but the person concerned may be called upon to prove a specific reason, or at least to establish its plausibility, when proving its reality. In rebutting the latter, the military administrative system's lack of interest is ultimately subject to external review by judicial remedy.

According to Subtitle 21, which details the rules on the call-up for military service, the Military Code of Conduct reserves formalised decision-making powers for reasons of the rule of law, which may be activated after the initiation of the declaration of a state of war:[286] without which, the lack of fixing the number of personnel to be called up and the date of call-up does not result in a legislative omission of the subject matter of a ministerial decree, and the finalisation by host defence

[286] The initiative period regulation applies within the framework of detailed authorisation. In contrast, during a declared state of war, the rules of the Hvt. are not protected against the different necessity and proportionality aspects of any special legal order government decree. From this point of view, the description of the system of the Hvt. can only be described as a regulatory presumption allowing derogation, and not as a framework seeking to be absolutely valid.

organisations is also a task to be fixed during this period pursuant to Article 36 paragraph (1).

The system of obstacles to recruitment is laid down in Article 37 of the Hvt., the system of recruitment barriers consists of statutory elements of an absolute nature and additional discretionary criteria laid down in a government decree. In this respect, the lower age limit under paragraph (1) and the upper age limits - dependent on former military training - involved in the age of adulthood can also be regarded as circumscriptions of the age of adulthood condition, with the consideration that an absolute nature of the prohibition of child soldiering under international law and the more limited military utility of older age result in an overall age-group focus as viewed from the perspective of military service obligation. All other considerations, unlike the exemption criteria that give rise to the planning framework conditions for other military personal defence obligations, have become an element of governmental discretion, ultimately including the issues of unfitness otherwise referred to in the Act. Indeed, the latter criterion may have a range of interpretation which, despite its apparently absolute quality, loses its justifiable relevance in wartime circumstances.

The *Government Decree 614/2022 (XII. 29.) on the implementation of certain provisions of the Act on Defence and the Hungarian Defence Forces* regulates partly as a continuation of the criteria of the previous practice of military service, weighs the number of children and the number of dependants and guardianship, activities and candidacies related to representative democracy, activities related to the armed forces, law enforcement agencies and national security services, and, previously, the completion of civilian service and the time required for pending proceedings of licensing, in addition to certain competing interests of criminal record.

In this respect, however, it can be noted that the invocation of a disproportionately lenient obligation in the interests of military service is not justified: ultimately, the operational security interest of each of the

fundamental state institutions, including the family, is weighed against the availability of alternatives that trigger it, where the feasibility of the conflicting interests of the interest that addresses the stronger challenge is only affected by the competing interest but does not in itself result in an absolute interest exemption.

That is why the new legislation contains an exemption for previously imposed guardianship and excludes, for example, the "escape route" of potential guardianship situations that are likely to become massive in wartime. In this respect, either, criminal record alone cannot be an excuse: the commission of a minor offence, possibly committed as a particular offence, cannot result in an exemption from military service, unlike the legal consequences of a crime against the State. However, the comparison of the conditions for the completion of military service in the meantime is not provided for in Article 40 of the Hvt. provides the interruption of service, which may be initiated even by a relative, and Article 41 for the discharge from military service.

3.2. The obligation of national defence labour

The regulatory space determined by Article XXXI Paragraph (4) of the Fundamental Law is primarily filled with content by the Hvt., with the Act itself referring to the need for further rules by setting a deadline in Article 109.

The determinations of the Fundamental Law:

- being tied to a state of war (time),
- residency in Hungary (in the same sense as the obligation to serve),
- adulthood (in the same sense as compulsory service), and
- Hungarian nationality (basically the same sense as compulsory service but without the possibility of multiple nationality derogations).

The primary constitutional determination therefore does not include a gender distinction, unlike the military service obligation, and similarly to the civil defence obligation. As a consequence, in the eventual application of the legislation, in addition to age differentiation, a higher participation of women is likely, in addition to the fact that the health care component of civil defence obligations is also likely to involve a higher participation of women.

At this point, it is necessary to point out that the different priorities of civil defence activities in times of armed conflicts are also laid down in Article 45 of Hvt. This particular temporal formula, which has already been discussed, seeks to summarise legal and factual situations: in this respect, the Hvt., in addition to a declared state of war, also includes the period of initiation and the period of repelling an unexpected attack, moving away from the special legal order category system. The definition in Article 3 point 6. includes the definition of 'armed conflict', since acts involving the use of weapons may already occur in the triggering events, which, for example, may also reassess the civil defence tasks of defence in general.

Article 44, which describes the national defence labour obligation, can be considered fragmentary, as it does not go beyond the categorisation of national defence labour obligation and the basic rules of exemption. However, the Hvt. specifies the purpose of the obligation to perform national defence work by stating the maintenance and restoration of the functioning of the country, which, on the whole, defines a fairly general scope of interpretation being much broader than the military purpose of national defence.

All that can be compared to the focus areas of civil defence obligation in the period of armed conflicts under Subtitle 29 of the Hvt., which range from the tools of awareness-raising and providing information, to the enforcement of atypical defence rules, to administrative processes, planning, stockpiling and implementation of specific relief and supply tasks, with the preparation for all these being regulated as a specific peace

task. Article 45 of the Hvt. specifies in that respect the scope of interpretation of Article 8 Paragraph (4) of the Vbö.

According to the statutory typology of the obligation of labour for the national defence, it is permissible to impose it on a permanent or temporary basis, in which - in proportion to personal abilities and health condition - a workplace may be designated for the performance of physical or mental work, subject to detailed regulation by government decree in accordance with Article 44 paragraph (1). In comparison, Article 109 of the Hvt. is more closely linked to Article XXXI Paragraph (4) of the Fundamental Law prescribing the preparation and regular review of a draft law for the purpose of detailed regulation. It is clear from the rather fragmentary Article 44 that, in contrast to the temporary subtype of national defence labour obligation, service or employment in the armed forces, law enforcement agencies or national security services has priority, and that the exemptions provided for in the Act are only laid down for the temporary national defence labour obligation, while the possibility of regulating the permanent version is open within the framework of the conditions laid down in the Fundamental Law.

In the case where the permanent version of national defence labour obligation is, in fact, a form of tied labour management, i.e. a prohibition on dismissal and criminal sanctions for breach of obligations arising from peacetime work, the complementary temporary national defence labour obligation is the centre of gravity of the sui generis constitutional obligation. That also means, however, that the exemptions could not be interpreted in the context of tightening conditions for peacetime labour, since it would not make sense to list any additional grounds for exclusion for a state of war in relation to suitability for peacetime work.

In contrast, temporary national defence labour obligation is an obligation to perform an activity in the public interest outside the daily activity period, which conceptually can only be exercised at the expense of leisure time beyond ordinary daily working hours. The exemptions under Article 44 paragraph (2) also take account of incapacity for work and age over

65, pregnancy, care of a child up to the age of three, sole care of a close relative in need of care or sole care of a minor child living in the same household, and the exercise of priestly duties as a statutory presumption, as well as an exemption in the public interest.

As a concluding thought, it should be referred to again that the introduction of the obligation to work in the field of defence is not an absolute necessity in the case of a state of war, and is, therefore most likely to be preceded by the application of the personal obligations contained in Article 6 of Vbö. However, in the case where the civil defence obligation is accompanied by a ground for exemption under the rules of the Vbö. which is not identified for the purposes of the national defence labour obligation, the activation of the latter may ultimately arise in respect of the temporary obligation, unless otherwise provided for in the regulations envisaged for later adoption.

4. Summary

Going beyond the regulatory principles of the previous defence acts and Article XXXI of the Fundamental Law, which was elevated from them to constitutional level, Chapter II of the Vbö. reassessed the system of defence and security obligations within the scope of the Fundamental Law, aiming to harmonise the applicability of the individual obligations.

Considering that the regulation of restrictions on fundamental rights in special legal order is also a cornerstone of the Vbö., a uniform approach to the regulation of obligations and restrictions on rights could ultimately be achieved with regard to the regulatory solutions of the Fundamental Law, in order to ensure its enforceability. The former regulatory dichotomy of obligations, which had existed in the Disaster Management Act and the former Defence Act, has thus been virtually eliminated.

All this does not mean, however, that further objectives cannot be pursued in the context of the unification of the obligation scheme, such as the approximation of the two types of institutional arrangements for the

economic and material service obligation. Maintaining the separation of the two administrative subsystems is justified if they can be used as redundant systems which can replace each other. In absence of this, different databases run the risk of conflicting demands for two different services.

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IV.

The system of defence and security planning linked with NATO and national planning systems - Chapter III of the Vbö.

1. Introduction - the basics of governmental planning

The most important rules of task and cost planning are regulated by Government Decree 38/2012 (III. 12.) on the system of strategic government management. According to this regulation, all ministries are required to carry out the related planning tasks and produce the specified mandatory documents.

As the plans produced by the ministries were designed to be placed in a well-defined document hierarchy and information base, the regulation specified a number of mandatory elements to serve as a basis for the functioning of a unified planning system.

The Government Strategic Management System (GSMS) must be applied in all planning tasks, in addition to which the Defence and Security Planning System[287] and the Government Decree 400/2022 (X. 21.) on the Rules of Planning for Defence and Security Purposes, which sets out the detailed rules of the GSMS system, also integrate the guidelines of the GSMS system.

[287] Vbö. Chapter III

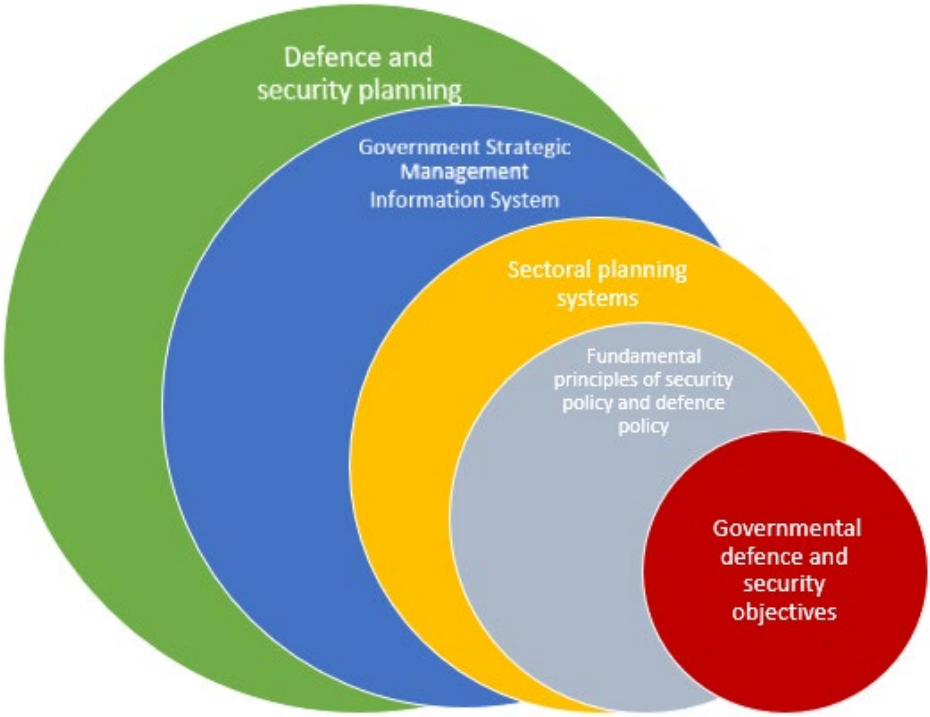


Figure 1: The relationship between the Government Strategic Management Information System (GSMS) and defence and security planning
(edited by the author and editor)

2. NATO planning and resilience in relation to the Defence Security Planning System

The obligations arising from Alliance membership (defence planning and participation in NATO operations)[288] impose tasks on the domestic capability development process that can significantly determine both the share of resources as well as the qualitative and quantitative indicators of capability development, and also the pace of development processes. A more precise interpretation is that the determination of a share of resources refers to resources allocated to capabilities that are specifically used to develop specific military capabilities (compatible with allied forces) of forces committed to NATO, or to participate in or sustain a particular operation, and also includes capability development recommendations for the civilian sector. These resource requirements are generally of such magnitude that they need to be accounted for by specific planning and should be integrated into defence plans in such a way that they are, as far as possible, always available and the capabilities they are intended to deliver are supposed to fit into the systems defined in the country's defence plans.

Factors influencing the process of planning (capability requirements) are both the development and maintenance of capabilities that are developed in the NATO Defence Planning Process (NDPP), allocated on a country-specific basis and ensure the conditions for cooperation in NATO's operations within a single set of requirements.[289] In practice, it is achieved by NATO setting out in its planning system the quantitative contribution commitment of a country to an operation and defining the capability requirements that characterise qualitative capabilities. In addition, the NDPP sets out the structural conditions and requirements for the requested capabilities in order to optimise their applicability.

[288] Act I of 1999 on the Accession of the Republic of Hungary to the North Atlantic Treaty and on the Proclamation of the Text of the Treaty.
[289] PO(2009)0042 'Outline Model for a NATO Defence Planning Process', 02 Apr 2009 NATO document

There is no difference in that respect considering the civilian capabilities proposed or requested by the Alliance, because they are characterised by similar indicators as military capabilities, with differences only in the deployment environment or in the intensity of operations.

There is also a need to take into account timing requirements and planning timing of capabilities to be provided towards NATO, as the Alliance imposes strict conditions on member states in reaching the starting date for full operational capability and deployability. The progress of planning, adherence to the planned timetable, implementation and applicability of capability development are continuously monitored by the Alliance and reported to the North Atlantic Council.

Taking all this into account, it is important to weigh the processes and requirements generated in NATO's defence planning system and the implications that it has had, or is likely to have, for planning activities in the defence and security planning system in the past, in the operation of other systems. It is important to underline that the Alliance does not focus only on military capabilities but also has a large number of non-military capability requirements in its planning system.

The requirements generated in NATO's planning system need to be reflected in the context of national capabilities, and it is recommended that they be integrated into the respective steps of both civil and military capability planning. This process is important not only because it provides capability requirements that are essential for successful tasking but also because the requirements system is based on a well-established set of information developed by international staff, based on operational experience, and supported by detailed rules, technical instructions and standards, thus assisting the planners. The information provided by the NDPP allows to identify precisely when it is necessary to intervene and feed data into the national planning system and how to shape defence forces, as well as define the vision of forces (as a target to be achieved) by the end of the planning period. Through our membership of NATO, we are also responsible for our allies fighting together and cooperating in

operations, one of the keys to which is the provision of a participating force equipped, trained and organised by the same standards. Certainly, that will only work optimally if the Allied nations cooperating with us also identify the concept of Allied membership and the obligations and expectations that flow from it in the same way. On the other hand, it should be noted that if a given country does not meet the qualitative capabilities required by NATO, it will have to be replaced by another nation (which may create tensions), and if a given country does not meet the quantitative capability requirements (e.g. equipment, training), it will only be capable of limited operations, and may only be able to carry out operations under limited conditions. However, it should also be borne in mind that the Alliance's force development objectives can always be aligned with our national interests through proper planning and political advocacy, and the capabilities thus generated are available to develop domestic defence capabilities.

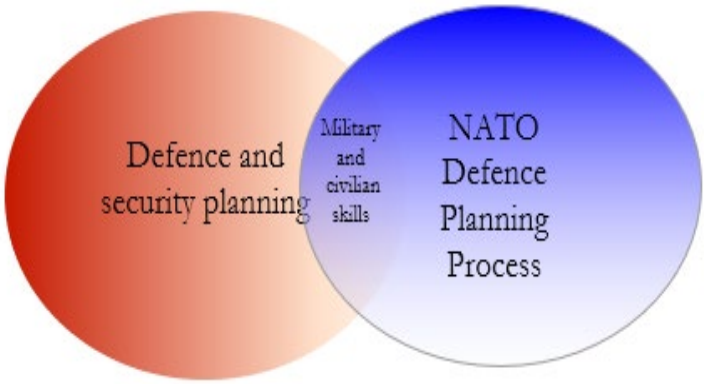


Figure 2: Relationship between the NATO Defence Planning Process (NDPP) and the Defence and Security Planning System (edited by the author)

The issue of resilience is of particular importance in the design of the planning system and it is discussed in detail in a separate chapter of this

volume. From a planning perspective, it is appropriate to define the national tasks and objectives to be carried out in order to strengthen resilience in a way that is able to follow the requirements of the Alliance and address the capability requirements generated by the Alliance's expectations in parallel with the development of capabilities to serve national objectives. Here, it is not only the development of specifically military capabilities that need to be considered but also a definition of objectives that go hand in hand with the development of civilian and civil-military joint capabilities. In addition, an integration of the Alliance's proposed civilian capabilities into the national capability system will help to reduce the planning time and resources needed to further develop existing systems or develop new ones.

Accordingly, it is recommended that during the elaboration of the plan documents, the relevant development, maintenance, and coordination functions and tasks be presented, and their requirements should be dealt with in a separate chapter along the lines of national-level objectives and procedures. At all four levels of the planning documents (the planning system), it is proposed to channel information on the development of these capabilities and present their interlinkages.

3. Basics of defence and security design

Planning basics are defined in the Vbö. with an approach that facilitates the introduction and implementation of multi-level planning and the flow of the necessary information by processing their interaction and incorporating them into a planning document. These levels include the highest level principle documents and the plan documents for direct implementation, grouping them into a kind of structure. All in all, the law states that *"In order to maintain, strengthen and prepare for the defence and security of the country, the Government shall operate a defence and security planning system."*[290]

[290] Vbö. Section 20 (1).

According to its purpose, the defence and security planning system is a system designed to prepare defence and security organisations under the Act and the bodies under the control of the Government involved in the performance of defence and security tasks for incident management, to strategically define their related operations and development and provide a framework for cooperation.

In the defence and security planning system

- according to a centrally defined set of criteria,
- separately by sector,
- in a coordinated way at government level (preferably through a coordinating body, planning according to the same guidelines),
- including the planning of budgetary resources

strategic and implementation level planning documents are developed[291].

The centrally defined aspects are all the policies, guidelines, principles, etc., or other measures related to defence and security activities set by the Government, the objectives of which are to ensure the protection of Hungary and its citizens in the event of a defence and security incident.

Sectoral separation covers those specific tasks and processes related to sectoral defence and security activities that help achieve the objectives set by the government at the pace assigned and according to the schedule set, in cooperation with other sectors.

Coordinated tasks at government level ensure compliance with requirements that may affect sectors in different ways and depths but are implemented as parts of the same process, in cooperation with all participants, for the same goals.

As regards the planning of budgetary resources, it should be stressed that all sectors have to plan their defence and security-related tasks from their own budgets in the broad sense, and their defence-related tasks in the

[291] Hvt. Section 10 (3) (c), Section 50 (c) of the Vbö.

narrow sense, and the defence budget is not intended to meet these resource requirements.

The law requires all relevant public bodies to carry out the following tasks in the operation of the defence and security planning system:

- to prepare defence and security strategies that meet the requirements set by the Government for the coordination of defence and security activities and support a coherent and coordinated implementation of defence and security tasks;
- the efficient sharing of information between the bodies and organisations involved in the performance of defence and security tasks should be given priority in order to ensure that all the organisations involved in planning carry out their planning tasks in a coordinated and cooperative manner at the same pace, independently of each other but still with the mutual provision of the necessary data, with the primary concern for national security interests;
- the promotion of the widest possible cooperation between the bodies and organisations involved in the performance of defence and security tasks should be kept in mind in the course of the planning process, in order to ensure that the same source and content of basic information and planning inputs are applied in the planning exercise, and that the analysis of individual challenges, threats and potential crises is carried out in a comprehensive approach;
- forecasts and reports from the national security services on challenges, threats, crisis zones and related counter- or dangerous endeavours should be properly channelled into the process, bearing in mind that planning inputs are fundamentally influenced by them;
- all planning processes start by processing, evaluating and incorporating the experience of what has already happened,

ignoring this information can lead to mistakes that have already been made and implementation problems, so it should be treated as a priority. That should be complemented by ongoing tasks and developments that have already been started, supported by resources, based on previously assessed security and other environmental challenges;

- through a membership of the Alliance, the country fulfils obligations that presuppose international cooperation and coordination, and as a result of them, it is necessary to transpose into the domestic system and processes the solutions that have been developed and are working effectively in the planning practice of NATO, the EU and other international cooperation for defence and security purposes;
- the monitoring of foreign defence and security solutions and innovations, as well as related professional and scientific research and its results, and of scientific results and technological innovations that could pose a defence and security challenge, will help to take into account scientific and future solutions that could support the development and simplification of the main streamlines of development, procedures and solutions. The results should be used in the operation of the defence and security planning system.

The Act on the Coordination of Defence and Security Activities places the management of the planning system under the authority of the Government, thus ensuring coherence between the plans prepared at and below the level of government and the performance of planning tasks along the main streamlines defining the achievement of the same objectives.

The law establishes the main documents of the defence and security planning system at four different levels, which are produced separately but in close relationship to each other, meeting each other's information needs and underlying principles. That provides a secure framework that

contributes to an accurate execution of planning, transparency of the process, ease of understanding and interoperability of plans.

The law defines 3+n mandatory safety and security plans to be prepared at governmental or ministerial level, as follows:

a) Basic principles of security and defence policy

The Security and Defence Policy Principles Planning Document is a long term, principle-based, public security and defence planning document prepared by the Government, defined and adopted by Parliament. Based on an assessment of the situation and threats, taking into account the country's geostrategic potential, the plan provides guidance to the Government on the main principles, directions and objectives for planning and implementing the country's defence and security preparedness, as well as the development, maintenance and operation of its capabilities, based on the defence and security capabilities and the developments planned in this context, and in the framework of cooperation with the bodies under its control and with the bodies and organisations involved in the performance of defence and security tasks.

The Government shall submit a proposal to Parliament for the establishment of the basic principles of security and defence policy, in which it shall

- set out national planning objectives for defence and security to be achieved on the basis of an assessment of the security situation in the country and the nation,
- identify external pressures and risks affecting Hungary, internal challenges and possible directions for development within a planned timeframe,
- set out a strategic framework for planning for defence and security preparedness,
- define the principles of cooperation between the bodies and organisations involved in planning,

- take stock of and assess the development tasks in the implementation process and, on the basis of the challenges, identify the directions of further development needed to achieve the defence and security objectives, and
- set out cross-sectoral principles for maintaining and operating existing and achievable capabilities.

As a special planning process, the government's proposal on the content of the basic principles of security and defence policy must be submitted for public consultation during the preparative phase.

The Vbö. entrusts the preparation of the basic principles of security and defence policy to the Minister of Foreign Affairs and Foreign Trade and provides for its review as necessary but at least every four years.

The Principles of Defence and Security Policy document is the basis for all planning documents in the defence and security planning system, a planning document that includes strategic objectives, which provides the main directions and initial information for setting the objectives of lower-order, "derived" defence and security plans and for drawing up the plans.

The development (steps) and structure of the document in one version is proposed as follows:

- an evaluation of the implementation of the document drawn up in the previous period and a demonstration of the need for a new document;
- setting the conditions and requirements for the development of the document in a political framework;
- a general assessment of the situation, including the identification of broader planning objectives to be achieved for the country and the nation to ensure security;
- identifying external and internal challenges and expected impacts on Hungary in the long term and, on that basis, defining possible directions that guarantee development and promote the

development of the country and the nation's defence and security along the given value system;

- a definition of the strategic target areas within which the tasks of defence and security preparedness should be planned;
- a definition of frameworks, principles and interfaces, which are meant to be cornerstones for planning a coordinated operation of the bodies and organisations involved in the planning process;
- identifying areas for development that are essential to achieve the country's defence and security objectives;
- a definition of principles for the maintenance and operation of development capacity areas,
- identifying the strengths of the country's defence and security system and setting tasks for the development of derivative plans.

b) The National Security Strategy

The National Security Strategy was a strategic planning document that had been used in the past but it was difficult to integrate into the planning and implementation system that ensured the country's defence and security. The main problem was the lack of a complex defence and security planning system, a shortcoming which was remedied by the Vbö.

As a result, the National Security Strategy is a public planning document issued by a Government decision in accordance with the principles of security and defence policy, which sets out in the long run

- a general assessment of the security situation in the country;
- the assets to be protected by defence and security capabilities;
- challenges, threats and potential crises affecting the defence and security situation of the country;
- the main relevant development directions, and
- the lines of action identified.

The drafting of the national security strategy is decided by the Government, prepared by the Minister of Foreign Affairs and Foreign Trade and reviewed every four years, or in the event of changes in the security situation, or after an amendment and revision of the Principles of Security and Defence Policy Planning Document.

The detailed content of the document assesses and defines

- Hungary's basic abilities;
- Hungary's security interests;
- Hungary's security environment, its overall security situation;
- strategic objectives related to defence and security;
- the assets to be protected through the development of defence and security capabilities;
- the security challenges, risks, threats and potential crises that determine the defence and security situation of the country;
- the main development directions for the defence and security of Hungary, and
- all related courses of action, tasks and instruments that guarantee Hungary's defence and security.

c) The Integrated Defence and Security Guidelines

The Integrated Defence and Security Guidance will be developed on the basis of the Defence and security Policy Principles and the National Security Strategy, taking into account the primacy of national security interests and the protection of classified information. The Guidelines are a long-term defence and security planning document in which the Government sets out:

- the capability development objectives to be achieved in the planning period in order to promote Hungary's defence and security interests;

- all the lines of intervention, risks and means of implementation necessary to strengthen defence and maintain the security of Hungary, which must be taken into account in sectoral defence and security planning;
- the bodies and organisations cooperating in the implementation phase of the tasks necessary for the achievement of Hungary's defence and security objectives, as well as the points of coordination required for the implementation of their tasks, and
- tasks related to the sectors which, if implemented, will enable the country to achieve the objectives of strengthening defence and security.

The central body for defence and security management, the Defence Administration Office, will have a key role in the development of the plan document, with the head of the Office responsible for the development and coordination of planning activities across government. The Integrated Defence and Security Guidance will be reviewed in the second year following its entry into force and following the revision of the National Security Strategy.

d) Sectoral or challenge- or threat-focused strategies, baselines or action plans, based on risk analysis, as required by sectoral acts and government decrees.

At the fourth level of the planning system are the lower-level strategies and planning documents that directly contain the professional strategies, objectives, tasks and allocated resources of each respective sector. The plans and processes dealt with here are sector-specific but in their preparation and in the planning process they must not deviate from higher-level planning documents issued by the Government and the objectives set out in them. All sectoral tasks covering the defence and security agenda should be planned along the lines set out in higher-level plans, taking into account and cooperating with the tasks of other sectors and to ensure their feasibility at the level of implementation. The elements necessary for implementation, such as resources, circumstances

and appropriate means to be applied, should be considered in planning and reflected in the plan.

As a general rule, the identified organisations are obliged to prepare two types of defence and security plans, which are ordered and approved by the minister responsible for the area concerned, who are also responsible for the feasibility, modification, and review of the plans.

The Basic Defence and Security Plan contains:

- the development, operational and maintenance, cooperative objectives and tasks to be performed in relation to the organisation's defence and security activities;
- the defence and security objectives of the bodies under its control;
- the allocation of resources planned for defence and security activities;
- the precise definition of resource needs and the timing of their use;
- the human, material, professional, material and organisational conditions necessary for the performance of the duties;
- the deadlines and responsibilities set for the implementation of the tasks, and
- the organisational tasks of follow-up.

The Basic Defence and Security Plan must be reviewed every two years or after the Integrated Safety and Security Policy Plan Document is amended or revised.

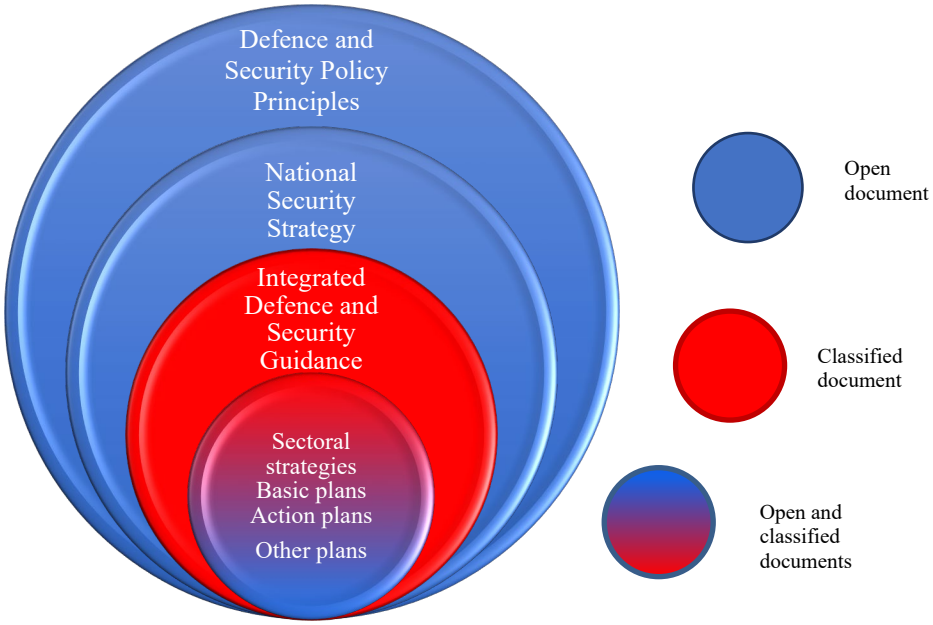
The followings are included in the Defence and Security Action Plan:

- the organisation's defence and security incident alert and notification plan;
- rules governing the specific operation of the organisation during a special legal regime period;

- rules governing the specific operation of the organisation following the order for a coordinated defence action;
- the hazard mitigation plan;
- the Defence Action Plan.

The hierarchy of defence and security planning documents is illustrated in the following figure.

Figure 3: Hierarchy of defence and security planning documents



4. Principles for defence and security planning and design documents

The framework of Government Decree 38/2012 (12.III.) on the Government Strategic Management System should be taken into account in the development of the defence and security planning process. This regulation sets out the requirements for developing and operating a

process that is goal-oriented, managed, bounded, transparent, controllable, results-oriented and resource-accountable.

Planning must be carried out and planning documents must be produced in such a way that their implementation will ensure the protection, maintenance and development of the Hungarian nation, and that the plans will ensure consistency with government measures related to defence and security.

The continuity of planning and the updating of plan sets should be ensured through monitoring and periodic review. These can be initiated by defining a time interval and can be linked to events generated by changes in the security environment or their tracking.

In accordance with the principles of governance, plan documents should be developed in such a way that their content ensures consistency with other plans being prepared in the plan system, and the implementation of objectives and tasks contained in the plans should be consistent with overall government objectives.

Planning should be carried out according to simple and transparent processes, and the protection of classified data should always be taken into account in the development of planning documents, so that monitoring and control tasks can be easily performed and intervention points can be easily identified.

Criteria for the content of planning shall be defined in such a way that they fully serve the objectives of preparing for, preventing and responding to defence and security incidents that contribute to the security of the country and the protection of its citizens. Along these lines, the tasks reflected in the plans should be socially and economically sustainable, realistically achievable, consistent with overall government objectives and consistent with other sectoral planning documents.

5. Process and method of security planning for security

The defence and security planning process is a set of interdependent, mutually supportive and data-driven processes and activities that, in the light of the Vbö, follows the hierarchy of defence and security documents (principle-strategy-guidance-sectoral plans), thus establishing a process of four main planning phases. The four planning phases represent four levels of planning and different levels of information depth.

The integrity of defence and security planning at the government level should be ensured by ensuring that any person responsible for drafting a defence and security planning document is supposed to involve all relevant government and other non-government bodies in the process and in the sharing/use of data during its development. That will provide a centrally controlled, interlinked planning process and planning document system that provides an appropriate basis for the organisation and eventual implementation of the country's defence and security tasks.

In order to promote coherence and an adequate content of the final plans, it is necessary to provide for the commenting on the drafts in different stages of the process of drafting the defence and security plan document, which should be given at least 30 days, depending on the level and content of the plan, and at least 15 days for the commenting on the final draft of the plan, for a given set of participants, as appropriate.

The participants in defence and security planning should be designated to cover the full spectrum of defence and security activities and necessarily include both public and non-public bodies and organisations. In designating this planning group, it is important to observe all legislation directly or indirectly related to the provision of, support for, or other involvement in defence and security activities but the main governing legislation should be the Vbö.

Taking this into account, the range of actors involved in planning (both implementers and participants) is typically as follows:

1. government administrations,

2. the Hungarian Defence Forces,
3. law enforcement agencies,
4. national security services,
5. the Parliamentary Guard,
6. local authorities and bodies under their control,
7. the judicial and prosecutorial organisation,
8. healthcare providers and pharmaceutical supply bodies,
9. educational, cultural and scientific institutions,
10. the national news agency, the Media Service Support and Asset Management Fund,
11. traffic, transport, electronic communication, information technology and postal services,
12. the Hungarian National Bank,
13. the National Media and Infocommunications Authority,
14. the Hungarian Energy and Public Utility Regulatory Authority,
15. bodies providing public utilities or public services,
16. operators of vital systems essential for providing the basic needs of society,
17. any body which is required by law to perform a defence and security function or to assist in the performance of a defence and security obligation.

Monitoring and evaluation is an important part of the planning cycle. During the implementation phase of a defence and security planning document, monitoring plan, the analysis, sub-analysis, evaluation and periodic review of the results of the planned tasks should be ensured in order to achieve the objectives set.

The purpose of monitoring and evaluation should be to identify the tasks to be performed to ensure that the defence and security planning processes are aligned, compare the results of plans and implementation, as well as process experience at the appropriate level, draw conclusions, feed the results into the process and, in turn, eliminate problems that arise. The assessment of implementation and the revision or redrafting of a planning document (or the proposal to do so), as appropriate, is the responsibility of the person responsible for the development of the defence and security planning document.

In any case, the main findings of monitoring and evaluation should be recorded, so that the organisation approving the defence and security plan or the organisation with top-level responsibility for its implementation is aware of the status of the achievement of planned objectives at any given time, the measures taken and the nature and details of the necessary interventions. Reporting should be required on a regular basis, at least annually (or more than once a year), in order to provide the top level organisation with more accurate, complete and timely information to achieve the objectives. It would be useful to introduce the concept of an ex-post report into the system or process, which would allow the top level management body to be informed at any time of the circumstances and status of a project, thus providing an opportunity for immediate intervention. In any case, the manager of a defence and security plan process may propose action to his/her higher level direct management body if the content of the ex-post report, interim or ex-post evaluation makes it necessary.

The assessment of defence and security planning documents can be done by in the form of a

- report;
- extraordinary report;
- intermediate evaluation;
- ex-post evaluation;

- summary report.

The purpose of a report compiled during the evaluation of a plan document is to examine the achievement of tasks, goals and objectives planned in the various defence and security plan documents, identify and address problems, assess and evaluate consequences and risks, prepare the necessary decisions, as well as prepare and implement the necessary interventions.

It is proposed that the report be drafted to include, as appropriate:

- the status of the desired objectives in a defence and security plan document for the reporting period;
- any shortcomings in relation to the plan, the reasons for them or the extent of progress;
- assessing, evaluating and drawing conclusions on consequences and risks;
- proposed intervention points and their content and scope; and
- a corrective action plan to address backlogs and risks.

In order to keep the management entity informed, planning organisations may carry out interim assessments of the implementation of a defence and security management plan document several times a year, the results of which shall be reported to the management entity or its head.

If, during the planning process or during its implementation, the monitor or evaluator determines that the objectives set out in a strategic plan document can no longer be achieved during the implementation period, he/she shall propose a revision and amendment of the strategic plan document. The revision of a defence and security plan document shall be accompanied by a review and, if necessary, amendment of any other defence and security plan documents related to the revised defence and security plan document.

6. Summary

The entry into force of the Vbö. and its implementing regulations means the establishment of a multi-level security planning system that coordinates preparedness for all issues and all elements of government from the highest level national planning documents to implementation action plans, in all issues and for all elements of government in the short, medium and longer term. The planning system is consistent with the Government Strategic Management Framework, with appropriate elements for integration into NATO's defence capability planning process. Its complex planning system, which provides for numerous feedbacks and cyclical reviews, will result in a more cost-effective and sustainable defence and security management and organisation system while helping to enhance national resilience and the preparedness of the organisations involved in its implementation.

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V.
Preparation and mobilisation of the national economy for defence and security purposes - Chapter IV of the Vbö.

1. Introduction

Whether armed or unarmed, conflicts throughout history have always had two determining factors: military force and the economic potential needed to mobilise and maintain it, which are interrelated and are the basis as well as purpose of each other. Today, the resources and performance of a national economy determine the potential of which the defence economy and military power are a part, and their relationship and interaction have been recorded in historiographical accounts of armed struggles since antiquity, among other factors. [292]

The strong defence-military capability, the system of linkages between disarmament and peace processes is characterised by the fact that *"without security there is no strong economy, without a stable economy there is no strong defence."*[293]

It is impossible to defend the country in a military conflict or disaster without modern armed forces and law enforcement agencies but these organizations are only a part of the country's defence system, since the preparation and mobilization of national economy requires the involvement of all parts of society, in addition to a strong defence administration, which can be considered as part of national resilience.[294]

As part of the constitutional development, in order to facilitate the responsiveness of the state, it has become necessary to amend the

[292] The macro processes of the defence economy, Textbook on Military Economics, Budapest 1996 (11.p.).
[293] SZENES, Zoltán: The state of the defence economy in Hungary, Military Logistics 2015/2. issue 10. page.
[294] SZENES, Zoltán: The State of the Defence Economy in Hungary, Military Logistics 2015/2. p. 10-11.

Fundamental Law on several occasions in recent years. The Ninth Amendment to the Fundamental Law laid the foundations for the renewal of the legal regulation of defence and security tasks and measures that can be introduced during a special legal order, which is to be fulfilled by Act XCIII of 2021 on the Coordination of Defence and Security Activities (hereinafter referred to as the Act). In addition to the legal provisions relating to defence, maintenance and development of the individual and collective sense of security, the Hungarian nation, the Act also stipulates that *"the protection and security of Hungary is a national matter."*[295] In addition to the Vbö., the Hvt. stipulates that "national defence is a national matter",[296] and the Disaster Management Act states that *"disaster management is a national matter, and the unified management of defence is a state task."*

2. Defence and security

The Act defines the concept of defence and security administration, which is directed by the Government, for the implementation of the state's tasks in the face of threats and attacks against Hungary. These tasks are the centrally coordinated planning, implementation and command activities of state bodies established or designated by law for such tasks to counter threats and attacks against Hungary and its population, including the system of defence administration and the military administration forming part of it, as well as the related law enforcement agencies.[297] According to Article 23(1) of the Vbö., *"the preparation and mobilisation of the national economy for defence and security purposes is the totality of planning, preparation, provisioning, mobilisation, management and supervision measures and tasks within the framework of the coordination of the performance of defence and security tasks, in the interests of the security and stability of the country, in particular the*

[295] Vbö. Section 1 .
[296] Hvt. Section 1.
[297] Article 5 section 16, point 16.

supply of the population, and the continuity of the functioning of the State." [298]

That includes, certainly, the sustainability of supplies to the population, the availability of movable and immovable assets needed for defence and security measures that cannot be provided by other means, the sustainability of the functioning of the economy, and the mitigation of the economic impact of defence and security incidents as well as mitigation of damages.

Among the explanatory provisions of the Vbö. is found the definition of the concept and content of economic preparedness, which is the continuous planning, service and regulatory activity in which governmental administrative bodies and service providers involved prepare national economy for economic adjustment tasks that may be ordered if necessary, and for the release and use of necessary resources for defence and security purposes.[299]

According to the statutory definition, *"training for defence and security purposes is the development, updating and enhancement of the defence and security awareness and additional defence and security knowledge of the personnel of state bodies, within the framework of a training system laid down by law."*[300]

The aim of Hungary's National Security Strategy[301] is *"to maintain and strengthen the current level of security in Hungary, and thereby ensure the country's further development in a volatile world."*[302] According to the National Security Strategy, the key element in responding to volatile challenges is primarily the development of Hungary's national economy, including defence industry.

[298] For more information see Vbö. section 23.
[299] For more information, see Article 5(2) of the Vbö.
[300] Art. 5 section 13 of the Vbö.
[301] Government Decision 1163/2020 (IV. 21.) on the National Security Strategy of Hungary.
[302] Government Decision 1163/2020 (21.IV.), point 3.

The Zrínyi Defence and Armed Forces Development Programme, launched in 2017, states that the development of domestic defence industry will achieve the objectives of the National Security Strategy.[303]

Due to a limited availability of natural resources and our high dependence on imports of certain energy sources, energy security, including diversification of energy imports and ensuring exposure/independence-free supply of energy sources for domestic and industrial consumption, is a key factor in preparing the national economy for security purposes.

At the same time, the interdependence of states is significant, so that unforeseen crises can spread to other countries in a short time, with negative effects amplified by competition between global and power centres.

The instability of the international system is increasing, with population explosions in Africa and Central Asia, instability in the region, migration, the security of some neighbouring regions and the war in Ukraine, all of which are creating the potential for a conventional or armed conflict in our neighbourhood.[304]

3. Basics of preparing the national economy for defence

On the basis of Act CXL of 2021 on Defence and the Hungarian Defence Forces, the Government shall determine the requirements related to the defence preparedness of our national economy, the country's defence reserves, the military industrial capacity, and the state tasks of defence preparedness, development and protection of infrastructure.[305]

The basic task of the preparation and mobilisation of national economy for defence purposes is to create economic conditions and opportunities already in peacetime, which guarantee the viability of national economy in special legal regimes and crisis situations, and ensure the viability of

[303] For more information see Government Decision 1163/2020 (21.4.20), point 28.
[304] For more information, see sections 50-53 of the National Security Strategy.
[305] Hvt. section 6 (1) paragraph b)

the organisations concerned, the details and rules of which are laid down in the Treaty.[306] Accordingly, the preparation and mobilisation of national economy for defence and security purposes is a set of planning, preparation, reserving, mobilisation, management and supervision measures and tasks in the context of the coordination of the performance of defence and security tasks, in order to ensure the security and stability of the country, particularly the supply of the population, and the continuity of the State's activities.[307]

Government Decree 79/2024 (III. 13.) regulating the preparation and mobilisation of the national economy for defence and security, and the implementation of the reserve system (hereinafter referred to as the Decree) stipulates that the preparation, mobilisation and reserve management of national economy for defence purposes shall be carried out in a planned and continuous manner, whereby the designated responsible performing agencies, organisations involved in the performance of defence and security tasks, requirement support bodies and planning bodies shall prepare the economy to meet the needs of defence as part of peacetime preparation tasks by carrying out tasks related to planning, investment, stockpiling, reserve management, capacity maintenance, stockpiling data and data reporting.[308]

A key part of that activity, beyond preparation, is the training of defence reserves, the economic needs of which are met essentially by drawing on fixed industrial (military) capacities after the declaration of a special legal order, by drawing on current production and stocks, state reserves and imports.[309]

[306] See more in Act XCIII of 2021, Chapter IV.
[307] Act XCIII of 2021, section 23 (1) paragraph.
[308] Government Decree 79/2023 (13. III.) § 1.
[309] LAKATOS, László: The system of defence and defence administration, their place and role in the system of defence administration. In: Júlia HORNYACSEK (ed): The system of defence administration and its relationship with defence administration in theory and practice; Dialóg Campus Kiadó Budapest, 2019, p. 99; *https://tudasportal.uni-nke.hu/xmlui/static/pdfjs/web/viewer.html?file=https://tudasportal.uni-*

The nature and quality of the defence tasks of a country are determined by the mobilisable capabilities of that country. The need for national sovereignty leads each country to consciously strive to create a national defence potential, i.e. a national economic potential, that is most appropriate for it. The defence potential of a state is *"the sum of the intellectual, economic and material-physical factors that exist in peacetime and can be realised in war, which enable a state or coalition to wage war effectively and achieve its objectives, in practice the state's degree of preparedness and defensive capability to avert armed aggression."*[310]

Defence potential is essentially composed of economic, defence-economic, military, scientific and moral-political factors, which include resources that society and the armed forces can place at the disposal of the armed struggle.[311]

In that context, resources can be understood as the social and economic system of a given state, the existence and quantity of labour and raw material resources, industry, agriculture, material stocks, and, as a related capability, the level of scientific and technical knowledge.

In a publication on the subject, the relationship resource + capability = force was used as the "output of force", i.e. defence force,[312] which illustrates the relationship described above.

Publications and textbooks on the subject[313] typically focus on peacetime and special legal order activities in the context of economic mobilisation

*nke.hu/xmlui/bitstream/handle/20.500.12944/13037/Web_PDF_vedelmi_igazgatas_rendszere.pdf?sequence=1&*isAllowed=y

[310] The macro processes of the defence economy, Textbook on Military Economics Budapest 1996, p. 203.

[311] Macroprocesses of the Defence Economy, Textbook on Military Economics Budapest 1996, Chapter 9.1.

[312] Balázs TAKSÁS: The hidden security risks of the defence industry and military logistics in today's globalised world, Logistics Defence Logistics Review 2017/6. p. 108.

[313] In particular TURÁK, János (ed.): The Macroprocesses of the Defence Economy, Textbook on Military Economics, Budapest University of Economics and Business, Budapest; 1996.

and security preparedness. Although preparation tasks in the two periods are different, they build on each other, i.e., one does not exist without the other. In peacetime, the task of national economy is to provide resources for the armed forces and the actors (government, economy, society) involved in the management of an expected crisis, war or other crisis situations to such an extent that the level of 'force' according to the above formula is as high as possible.

In a period of a special legal order, the technological level and the carrying capacity of national economy are decisive, since the output it produces can be used to deal with a crisis or war situation, together with the resources and capabilities created in peacetime. There are, however, two other important factors that we must not forget, either of which is the exposure and dependency mentioned earlier in the National Security Strategy, i.e. the use of the capabilities of another country's state resources such as military industry or other products as a supplier of services, or even import dependency in terms of energy resources. The other factor is the ability to replenish, i.e. to what extent and over what period of time national economy is able to replace the resources used to deal with the "situation"[314], either through production or services.[315]

In an environment seemingly safe, we tend to be generous with defence and security preparedness, so for example, since 2018, Hungary's planned defence preparedness appropriations for similar purposes have been essentially unchanged, with a spending of HUF 497 million on central defence and economic preparedness, which has not allowed for the preservation of real value, while in the same period the main budget for the Ministry of Defence chapter or the Ministry of Interior chapter increased several times over.[316]

[314] It could be any type of territorial crisis, war, or even a challenge affecting a whole country or region, a natural disaster or even a pandemic.
[315] TAKSÁS, Balázs: The hidden security risks of the defence industry and military logistics in today's globalised world, Logistics HSz 2017/6. p 108-110.
[316] KÁDÁR, Pál: Coordinated Management and Framework of Defence and Security Activities, NKE, VBSZKK, VBSZ and Governance Workshop Studies 2022/12 p. 10.

In connection with the above, the already repealed Government Decree 131/2003 (VIII. 22.)[317] on the regulation of the implementation of the tasks of defence preparedness and mobilisation of the national economy was drafted in 2003 but it contained in detail the tasks from planning to implementation, that central state administration bodies had to perform in the case of defence preparedness and mobilisation.

The current regulation in force defines the task of preparing for economic mobilisation as *"planning, carrying out tasks, related preparatory activities for legislation, the preparation of a plan of measures for economic mobilisation and monitoring".* The resources required for the implementation of economic preparation tasks are approved by the Government on the basis of a proposal by the Compiler of the Basic Plan for the Defence Economy.

The definition of the basic task of economic mobilisation is contained in both the Regulation and the Decree as follows:

> *"Economic mobilisation: a system of measures which may be ordered by a decision of the Government on the basis of this Act and the Government Decree issued on the basis of the authorisation, which allows for the regulated use or specific operation of national economic resources in order to effectively manage defence and security incidents."*[318]

According to the Regulation:

> *"§ 2 The basic task of economic mobilisation is to ensure the necessary conditions*
>
> *a) for the mobilisation and subsequent operation of the Hungarian Defence Forces, the civil protection organisation, the law enforcement and national security services,*

[317] The Government Decree 79/2023 (III. 13.) on the regulation of the preparation, mobilisation and implementation of the reserve of the national economy for defence and security was repealed.
[318] Art. 5 section 3 point 3 of the Vbö.

b) to provide the population with basic food, medicine, clothing, industrial and public necessities, and basic public and health services,

(c) the smooth functioning of the country's public administration and

d) to maintain the functioning of society and the national economy and, if necessary, to restore these functions."[319]

The wording of the Regulation focuses on the system of measures, while the Regulation sets out the implementation options provided by the regulatory framework.

The mobilisation of the economy starts with a government decision under the Act on the mobilisation of the economy, the process of which is set out in setion 34 of the Act.[320]

The Regulation defines strategic capacity as a capacity to produce basic and raw materials, tools, equipment, information containing classified information, and produce or repair equipment for the collection of classified information, to be provided by a fixed defence industry, domestic production. From the point of view of security of supply, it classifies as strategic the capacity to provide the population with basic food, medicines, industrial and public necessities, public and health services, and maintain or restore the functioning of society as well as the national economy.

It is worth noting that, looking at the data for the period prior to 2004, the plans at that time envisaged that major needs would be met mainly from national stocks or current production (60-70%) and imports (20-25%), while state reserves (4-9%) and fixed military capacity (6-12%) were

[319] Government Decree 79/2023 (III. 13.) section 2.
[320] See more in Vbö. section 34.

included in the plans[321], the composition and proportions of which are now clearly ripe for revision.

A key issue in preparing and mobilising the economy is continuous planning[322] and preparation in peacetime, in order to have as much "strength" as possible for the so-called mobilisation period, a process and capability that is adversely affected by frequent organisational changes.[323]

4. Summary

As regards the preparation and mobilisation of national economy for defence and security purposes, it is necessary to be constantly ready for a task for which we do not know when it will occur, at what intensity, how long it takes and exactly how much time we have to get prepared, or what resources (reserves) will have to be mobilised and trained if necessary, as well as how long "self-sufficiency" will last.

There are many laws, government regulations and lower-level organisational instruments in force to deal with these basic issues, the number of organisations and bodies needed to implement them is very large, and the task is complex, requiring continuous planning, regulation and "practice" by all participants concerned. Life always has surprises in store, such as the Danube floods, the red sludge disaster in 2010, the pandemic situation or the war in Ukraine. You cannot prepare by rules alone, just as "the proof of the pudding is in the eating ", so the enforcement and compliance/enforcement of legislation will stand or fall on its enforceability. The role of society and the general public in preparing and mobilising the economy is also huge, and they must be

[321] MEDVECZKY, Mihály: The theoretical foundations of the analysis of the qualified periodic performance of the national economy and possible modernisation directions of the planning of economic mobilisation PhD thesis, ZMNE 2004; p. 40.
[322] Government Decree 400/2022 (X. 21.) on the rules of planning for security and safety purposes.
[323] MEDVECZKY, 2004; p. 104.

prepared but consideration should also be given to making the private sector interested on a business and interest basis,[324] as the task is a "national issue". Central coordination of administrative activities related to the task is ensured by the central body for defence and security administration, the Defence Administration Agency, while the main responsibility for drafting falls within the portfolio of the Minister of the Interior.

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[324] MEDVECZKY, Mihály: The comprehensive concept of the secure operation and defence preparedness of the national economy for the period 2012-2030, Hadtudomány 2011/4. p. 66.

Public Service].
MEDVECZKY, Mihály (2011): *A nemzetgazdaság biztonságos működésének és védelmi felkészítésének 2012–2030 közötti időszakra vonatkozó átfogó koncepciója* [*A Comprehensive Concept for the Safe Operation and Defense Preparedness of the National Economy for the Period 2012–2030*]. *Hadtudomány*, 21(4), 59–68.
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VI.
National resilience - Chapter V of the Vbö.

1. Introduction - the concept of resilience

The concept of resilience originates from the science of ecology, where it was understood as the ability of an ecosystem to respond to change or to persist. The concept quickly spread to other disciplines that study complex interactions. Today, it is used at different levels of observation (individual, community, state, supranational) and in a wide range of disciplines, from psychology to economics and management studies, and over time it has also become a common concept in security policy studies. The concept has become so widespread that it is perhaps not an exaggeration to say that it has become a fundamental thesis of security policy thinking. In security policy, resilience is primarily understood as the preparedness and 'resilience' (societal resilience) of states and societies to various threats. We are therefore talking about a kind of adaptive capacity.

Social resilience is of particular importance for security policy because, according to experts, it can act as a deterrent against hybrid warfare. An attack on a country can be fended off simply by the fact that the attacked country has advanced resilience. Since one of the basic elements of hybrid warfare is an undermining of the social and political order of the other country, an attack may be doomed to failure if there is a high level of social resilience. Thus, a high degree of resilience results in a country convincing its potential attackers that its society is strong and cohesive enough to repel any hybrid-type attack. A rational and advanced society that trusts in the stability and fairness of its political and economic system

will be difficult to get mobilised against its own government, therefore hostile propaganda and disinformation will fall on deaf ears. [325]

There is no universally accepted definition of resilience, nor is there a standardised tool for measuring the state and extent of resilience. However, major international organisations and individual countries have typically developed principles and possibly formal definitions of resilience, which, while being specific, agree that resilience involves enhancing the defences of society as a whole. Notable among them is NATO's concept of resilience, according to which resilience can be understood as a specific two-component set of tasks, namely *Civil Preparedness* and Military Capabilities. The creation, maintenance and strengthening of resilience is primarily a national responsibility but increasing the resilience of individual member states also reduces the vulnerability of NATO as a whole,[326] and therefore coordination of the activities of individual member states at the alliance level is essential. Accordingly, NATO understands the strengthening and development of resilience as an added value and as a responsibility at the alliance level. In order to achieve that goal, it is considered essential to strengthen the civilian sector and involve it more and more intensively in supporting military operations.[327]

In order to ensure coherence between Member States, the Alliance has adopted the seven core requirements for resilience[328] and the main

[325] JERMALAVIČIUS, Tomas: Societal Resilience. A Basis for Whole-of-Society Approach to National Security. In book: Resistance Views: Essays on Unconventional Warfare and Small State Resistance. JSOU Press, 2018.
https://www.researchgate.net/publication/342946191_Societal_Resilience_A_Basis_for_Whole-of-Society_Approach_to_National_Security

[326] During operations, military transport, satellite communications and host nation support tasks are largely provided by civilian, commercial sources.

[327] NATO 2016: Commitment to enhance resilience. Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Warsaw, 8-9 July 2016 08 July 2016. http://www.nato.int/cps/en/natohq/official_texts_133180.htm

[328] The seven basic requirements:
1) maintaining the continued functioning of government,
2) maintaining uninterrupted utility services and energy supply,
3) managing uncoordinated mass movements of population,

orientations for civil preparedness, identifying the areas that are essential to strengthen resilience.[329]

2. International trends in resilience

The alignment with NATO requirements is, of course, influenced by different constitutional, legal, social, economic and cultural backgrounds and circumstances of each country, so the basic requirements may be determined by those different national frameworks. In the process, however, trends and tendencies that are more or less accepted by all Member States gradually emerge, with some differences in the way they are implemented according to national specificities. For reasons of space, the present chapter will limit itself to the two trends most relevant to defence and security management, which best illustrate the whole-of-government context of resilience.

2.1. Involving the whole of society in protection

There is almost unanimous agreement on that the *Whole of Government Approach* and the *Interagency Cooperation* that have been advocated in the past are no longer sufficient to counter hybrid threats, and that a *Whole of Society Approach* cooperation needs to be broadened further. One important reason for this is that in many cases the state does not have sufficient resources, personnel and expertise to counter attacks and threats across a wide spectrum.

A good example of that was the 2008 war between Russia and Georgia, where it was shown that Georgian state agencies had had very limited cyber defence tools, and both the public and private sectors were quickly

4) the continuous provision of basic food and drinking water,
5) mass casualty care,
6) the maintenance of the national media and electronic communications, and the continuous provision of the IT network,
7) ensuring the continued operation of transport and transport infrastructure.

[329] Resilience, civil preparedness and Article 3; NATO Official Website https://www.nato.int/cps/en/natohq/topics_132722.htm

engulfed by cyber attacks, prompting the need for immediate foreign assistance. However, Estonia, learning from its experience of a major cyber attack, has set up a volunteer cyber defence force, organised as a paramilitary force, with military ranks and directly linked to the army, which can be mobilised quickly in a crisis. Any Estonian citizen can apply to join that organisation, provided they have some level of IT qualifications. The Estonians also see it as a forum where private and public sectors can exchange experiences.[330]

In order to gain the support of local population, the Lithuanian Ministry of Defence started distributing a guide in January 2015, providing civilians with instructions in case of a Russian hybrid attack on Lithuania. It outlines 198 different resistance techniques and, in order to strengthen successful resistance as effectively as possible, the Lithuanians are also conducting exercises to help the population better understand their role in a crisis.[331]

The Scandinavian countries have made remarkable progress in developing a system that is as inclusive as possible. The Finnish government started to establish a comprehensive safety framework as early as 2003, involving all ministries and almost the whole society. In the system they have developed, the whole society perform defence at the same time, with everyone playing their part, including business and NGOs. Since autumn 2010, the Finnish government has set up an information network where different actors can exchange information, giving business a better understanding of the government's intentions and

[330] BASILAIA, Mikheil: Volunteers and Cyber Security: Options for Georgia. Cyber Security Bureau 2012. p. 10, p. 26. https://docplayer.net/3945120-Volunteers-and-cyber-security-options-for-georgia.html.
[331] BARTKOWSKI, M. (2015.): Nonviolent Civilian Defence to Counter Russian Hybrid Warfare, Johns Hopkins University, 2015. p. 19.
https://www.nonviolent-conflict.org/wp-content/uploads/2018/12/GOV1501_WhitePaper_Bartkowski.pdf

public decision-makers a clear picture of the preparedness of each sector and, through it, the resilience of the whole Finnish economy.[332]

Norway has developed the concept of "Total Defence", whereby all possible civilian and military resources are fully mobilised to defend the country and provide the maximum possible resistance against an aggressor. The conception is therefore focused on mobilising all national resources to maintain social security and not on supporting a total military struggle. As it is presented, the Total Defence system is composed of mutual support, cooperation and coordination mechanisms defined by law and pays particular attention to forms of cooperation between the military and the civilian side.[333]

Sweden has also created its own conception of total defence, which is regulated by a separate law.[334] The law provides for unified planning and crisis management, with Sweden being able to withstand any security-type crisis for at least three months. All individuals between the ages of 16 and 70 are obliged to contribute to Total Defence according to their education and occupation. The legislation empowered the Swedish government to oblige economic operators to participate in exercises and train in various types of preparedness, as well as make up different stockpiles.

The Swedish government is actively and continuously communicating with the whole population about their role in resilience. General information leaflets have been published on what the public should do in

[332] FINNISH GOVERNMENT Resolution / 2.11.2017: Security Strategy for Society. pp. 5-13.
https://turvallisuuskomitea.fi/wp-content/uploads/2018/04/YTS_2017_english.pdf
[333] NORWEGIAN MINISTRY of Defence - Norwegian Ministry of Justice and Public Security: Support and Cooperation. A description of the total defence in Norway. p. 8. *https://www.regjeringen.no/contentassets/5a9bd774183b4d548e33da101e7f7d43/support-and-cooperation.pdf*
[334] Total funding 2021-2025;
https://www.swedenabroad.se/globalassets/ambassader/nederlanderna-haag/documents/government-bill-totalforsvaret-20212025.pdf

times of crisis, and an alert system has been set up to inform the public by telephone or other specified means about developments in a crisis.

Sweden has set up a specialised civil preparedness institution (*Myndigheten för samhällsskydd och beredskap*), which, together with the army, carried out a year-long total defence exercise in 2019-20 as a series of core exercises and exercises with real-life execution. The series of exercises involved the parliament, the government, government agencies, regional administrations, local authorities, business organisations and the general public.[335]

In Hungary, too, thinking about whole-government and then, a few years ago, whole-society cooperation, its theoretical and legal foundations and the development of its organisational framework started as early as 2010.

The prevailing view in domestic literature is that the background organisational framework for the whole-government and whole-society cooperation necessary to strengthen resilience is to be found within the system of defence administration.[336] That theoretical grounding has had a significant impact on the main trend of defence and security reform, and whole-of-government coordination has accordingly been implemented within a newly established system of defence and security administration.

The establishment of a National Defence and Security Forum was specifically designed to involve non-state actors in crisis management and resilience, based on Act XCIII of 2021 on the Coordination of Defence and Security Activities (Act XCIII of 2021), in which state and

[335] RAND 2021: Enhancing Defence's Contribution to Societal Resilience in the UK Lessons from International Approaches. RAND Corporation. 2021. pp. 30-32. *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1027912/RAND_RRA1113-1.pdf*

[336] See Gyula GyIMESI, Veronika KARÁCSONY, Péter TÁLAS, Gergely VARGA: The possibility and conditions for the creation of an integrated security sector in Hungary, In: Péter TÁLAS (ed.): Towards the Creation of an Integrated Security Sphere in Hungary, Budapest, MTA Institute of Sociology, 2008, pp. 162-163.
István SIMICSKÓ: The history and actualities of hybrid warfare, Hadtudomány, No. 2017/3-4, p.12.
László KESZELY: ibid p. 62.

non-state issues related to the development of national resilience would have been discussed. The body would thus have acted as an all-society forum for resilience,[337] but the relevant provision of the law had been removed from the text in a legislative amendment before its entry into force, probably in order to avoid the current events of the ongoing Russia-Ukraine war becoming an unnecessary point of tension in such a forum.

2.2. Fusion paradigm

As early as 2005, the US Department of Justice proposed a new approach to the growing threat of terrorism and crime, which they called the "fusion paradigm." It involves the creation of fusion centres in certain regions or between organisations that can bring together and facilitate cooperation between different government agencies and the private sector in the field of counter-terrorism and crime prevention in a given area. As of February 2009, 58 fusion centres were operating in the United States, 34 of which were already active with federal and local police as well as intelligence officers. These centres could not only fight crime but all kinds of threats to society. They operate mainly with *Homeland Security* funding, provide trainings for their members and also have access to intelligence resources. Their creation reflects a fundamental philosophical shift in the state's approach to security, not only because they involve many more private actors but also because of a greater role given to prevention and the anticipation of threats.[338]

Russia follows similar principles: since hybrid defence and attack requires cooperation between many different areas, the National Defence Management Centre of the Russian Federation (Национальный центр управления обороной РФ) was created to facilitate that. It brings together 49 different military, police, economic, infrastructural and other

[337] Article 43 (1) of the Act.
[338] USA DEPARTMENT OF JUSTICE: Developing and Sharing Information and Intelligence in a New Era. United States Department of Justice, 2015. pp. 9-11. *http://it.ojp.gov/documents/d/fusion_center_guidelines.pdf.*
ROLLINS, John: Fusion Centres. Issues and Options for Congress. Federation of American Scientists, 2008. pp. 8-10. *https://www.*fas.org/sgp/crs/intel/RL34070.pdf

government agencies under the control of one single senior military officer. The cooperation involves not only state agencies but also private companies.[339]

In Hungary, the National Information Centre[340] was established in 2022 to analyse and evaluate information on international and domestic terrorism and organised crime, as well as on crimes against any person committed with or without weapons, and serve as the main information fusion and information sharing centre for law enforcement agencies, national security services and public administration bodies dealing with public security and national security risks.

The legal framework for the establishment of a national incident management centre in Hungary - as a central professional body coordinating whole-of-government crisis management - is being created along the fusion paradigm,[341] but the detailed operational rules are not public. The event management organisational *"function* itself *is essentially suitable for replacing the secretariat functions of the former operational staffs, extraordinary legal working groups and the Defence Council, but it also presupposes that the working conditions, the detailed rules for special decision-making procedures, the selection, training and familiarisation of the staff involved in this task are already established in the crisis-free period".*[342]

[339] GILES, Keir: Russia's 'New' Tools for Confronting the West Continuity and Innovation in Moscow's Exercise of Power. Chatham House, 2016. pp. 25-26. *https://www.chathamhouse.org/sites/default/files/publications/2016-03-russia-new-tools-giles.pdf*
[340] Act CXXV of 1995 on the National Security Services section 1 (e), section 8/A.
[341] Article 52(c) of the Vbö.
[342] KÁDÁR, Pál: Coordinated Management and Framework of Defence and Security Activities, Defence-Security Regulatory and Governance Workshop 2022/12, National University of Public Service, Defence-Security Regulatory and Governance Research Workshop, p.15.

3. Regulating national resilience

The concept of national resilience was first introduced in substantive law[343] in the Vbö:

> *"Vbö. § 5.7. national resilience: the North Atlantic Treaty as proclaimed by Act I of 1999, Article 3. the ability of the population, the economy and the State constituting a nation to effectively anticipate and prevent external or internal attempts, attacks, natural or industrial disasters, epidemics, or natural or industrial disasters, which may harm or threaten public order and security, the interests of the defence and national security of the State, or its stability, minimising risks and, in the event of their occurrence, managing them and ensuring their rapid and effective recovery through civil and military preparedness by developing security awareness, enhancing preparedness and taking the necessary protective measures."*

Prior to that, we could find elements of the issue or even the phrase itself in several strategic and planning documents but in its complexity and its generally accepted interpretation, Chapter V of the Vbö. was the first to detail the relevant rules, and all other laws were already following the provisions on resilience after its entry into force on 1 November 2022.[344]

National resilience also appeared in the text of Government Resolution 1163/2020 (21.IV.) on Hungary's National Security Strategy but its

[343] Surprisingly, even laws on such obvious and related regulatory subjects as Act CLXVI of 2012 on the Identification, Designation and Protection of Critical Systems and Facilities, as well as Act CXIII of 2011 on National Defence and the Hungarian Defence Forces and on Measures that May Be Introduced in Special Legal Regimes do not contain this turn of phrase, and even Act CXIII of 2011 on National Defence and the Hungarian Defence Forces and on Measures that May Be Introduced in Special Legal Regimes only mentions resilience to hybrid threats in Article 21 paragraph (1) point (l).

[344] The most relevant of these are Act CXL of 2021 on Defence and the Hungarian Defence Forces, Act CXXI of 2021 Amending Certain Acts on Internal Affairs in Connection with the Ninth Amendment to the Fundamental Law and Act XCIII of 2021 on the Coordination of Defence and Security Activities, as well as Act CXXVIII of 2011 on Disaster Management and the Amendment of Certain Related Acts, although the latter specifically addresses disaster resilience.

technical content is only partially in line with NATO's approach to this issue and the approach later reflected in the Vbö., while the predecessor of the current National Security Strategy did not contain any specific provisions on national resilience.[345]

Thet in itself is not too surprising when you view the date of proclamation in the light of current international trends at the time and the main professional objectives that NATO was pursuing. All that change, the strengthening of the concept of resilience and the shift in the focus of alliance policy-making, describes a clearly identifiable evolutionary trajectory, the current state of which is no more evident than the fact that NATO terminated the *Civil Emergency Planning Committee (CEPC)* in spring 2022, and its tasks were taken over by the newly formed NATO *Resilience Committee (CP).*[346] The new Committee is not only new in its name but also its main thrust of activity is around the seven core requirements, and its visibility and professional importance is greater than that of its predecessor.

The emergence of resilience is also visibly reinforced in the Strategic Concept[347] (NATO SC) adopted at NATO's Madrid Summit in 2022, even if only compared to the Strategic Concept that preceded it.[348] The Strategic Concept 2022 emphasises the critical importance of ensuring national and collective resilience, and also takes a principled stand on the need to strengthen individual and collective resilience[349] to ensure which Member States commit themselves to developing a stronger and more

[345] Government Decision 1035/2012 (II. 21.) on the National Security Strategy of Hungary.
[346] Resilience Committee; https://www.nato.int/cps/en/natohq/topics_50093.htm
[347] NATO 2022 Strategic Concept (NATO SC);
download: *290622-strategic-concept.pdf (nato.int)*
[348] Active Engagement, Modern Defence - Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization; 2010; *20120214_strategic-concept-2010-eng.pdf (nato.int*)
[349] NATO SC 5. "We will enhance our individual and collective resilience and technological edge. These efforts are critical to fulfil the Alliance's core tasks. (...)"

coordinated resilience,[350] that it is presented not only in relation to each challenge faced by the Alliance, the design and functioning of its command structure or the countries that pose a potential threat but also in relation to partner countries and support to prospective members as an important area of cooperation.[351]

In addition to the NATO perspective, we cannot ignore the different approaches of the European Union when approaching domestic legislation. The quasi-fundamental documents are the EU's Global Strategy for Foreign and Security Policy[352] (Global Strategy), which, in addition to the resilience of states and society, also emphasises the resilience of critical infrastructure and identifies resilience itself as a strategic priority,[353] and the European Commission's communication[354] (Joint Communication), which sets out ten guiding considerations for a strategic approach to resilience.[355]

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[350] NATO SC 26. "(...) We will pursue a more robust, integrated and coherent approach to building national and Alliance-wide resilience against military and non-military threats and challenges to our security, as a national responsibility and a collective commitment rooted in Article 3 of the North Atlantic Treaty."

[351] NATO SC 38. "(...) We will scale up the size and scope of our security and capacity-building assistance to vulnerable partners in our neighbourhood and beyond, to strengthen their preparedness and resilience and boost their capabilities to counter malign interference, prevent destabilisation and counter aggression."
NATO SC 41. "The security of countries aspiring to become members of the Alliance is intertwined with our own. We strongly support their independence, sovereignty and territorial integrity. We will strengthen political dialogue and cooperation with those who aim to join the Alliance, help strengthen their resilience against malign interference, build their capabilities, and enhance our practical support to advance their Euro-Atlantic aspirations."

[352] Shared Vision, Common Action: A Stronger Europe - A Global Strategy for the European Union's Foreign And Security Policy;
https://www.eeas.europa.eu/sites/default/files/eugs_review_web_0.pdf

[353] For more on that, see Anna, MOLNÁR: The EU's Global Foreign and Security Policy Strategy, Strategic Defence Research Centre, ELEMZÉSEK 2016/9. *svkk-elemzesek-2016-9-az-eu-globalis-strategiaja-molnar-a.original.pdf (uni-nke.hu)*

[354] JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL A strategic approach to resilience in EU external action; European Commission; 2017 *EUR-Lex - 52017JC0021 - EN - EUR-Lex (europa.eu)*

[355] See Annex to the COMMON COMMUNICATION *EUR-Lex - 52017JC0021 - EN - EUR-Lex (europa.eu).*

The Joint Communication identifies areas of EU resilience (critical infrastructure protection, energy security, climate change adaptation, civil defence, economic resilience, employment, global health risks, research), which already partly overlap with NATO requirements but also contain clear differences.

Returning to the National Security Strategy in force, the document underlines that the development of a whole-of-government system of defence administration is the first step towards building modern national resilience.[356] This can be identified with the first point of resilience requirements, the provision of continuous governance and government services but the strategy does not then follow the logic of NATO documents in addressing the other six basic requirements for resilience but only in different places and not necessarily in the same depth.

In that context, the requirement to increase the resilience of energy supply systems is a cross-cutting requirement. It is seen as achievable through the identification of diversification of energy sources and routes as a fundamental and long-term national interest that contributes to increasing the stability and resilience of our country.[357]

The National Security Strategy also refers to the capacity to manage uncontrolled mass movements, which is not initially aimed at creating this capacity but identifies it as a source of danger in the form of uncontrolled, mass and illegal migration[358] and highlights its healthcare, terrorism and destabilising effects on states. The National Security Strategy (NBS) goes on to state that *"properly addressing mass, uncontrolled and illegal migration and the risks it poses requires a new approach and a new, decisive and effective governmental, European and federal response".* The strategy calls for mass, uncontrolled and illegal migration to be stopped, not just managed.

[356] Government Decision 1163/2020. (IV. 21.) Annex 1, point 30.
[357] Government Decision 1163/2020 (IV. 21.) Annex 1, point 102.
[358] Government Decision 1163/2020 (IV. 21.) Annex 1, points 57-58.

Resilience in securing food and water supplies is also included as a resilience requirement in the strategy text. However, food and water security are mentioned not only together in the NBS,[359] as they are in NATO documents in general but are also emphasised separately and individually.

The ability to provide medical care for mass casualties is presented under the subheading on disaster risk reduction,[360] which is misleading in that this capability is not specifically linked to disasters in NATO's approach, nor is it treated as such in the NBS,[361] i.e. in this case it is more of a text placement/editing criticism, not necessarily a contentual one.

The resilience of civilian communications systems, next in line of resilience requirements, can also be identified as part of the objectives set out in the strategy document in the context of protecting government and other key information communications systems. The text also points out that a narrow range of potential suppliers of ICT may also pose a security risk.[362] In this technical segment, it is also important to note that NATO defence operations cannot be successfully fought solely on the basis of military communications infrastructure.[363]

In addition to the above, the resilience of civil transport systems as part of resilience is perhaps the least represented in the national security strategy. It is not even mentioned as an independent area but only as a potential target of terrorism,[364] although it is not an insignificant fact that more than 90 percent of military transport and troop movements for NATO military operations are carried out using civilian transport

[359] Government Decision 1163/2020 (IV. 21.) Annex 1, point 171.
[360] Government Decision 1163/2020 (IV. 21.) Annex 1 point 174.
[361] "Hungary must have the capabilities to form a complex prevention and disaster risk reduction system and to respond effectively to natural or industrial disasters, health emergencies and mass casualty and destruction attacks in order to protect the life, health and property of the population and to minimise damage."
[362] Government Decision 1163/2020 (IV. 21.) Annex 1, point 119.
[363] Vulnerabilities in a changing security environment, in Resilience and civil preparedness - Article 3; NATO, 2022. *NATO - Topic: Resilience and civil preparedness - Article* 3 .
[364] Government Decision 1163/2020 (IV. 21.) Annex 1, point 149.

infrastructure[365] and that would be no different for domestic missions, either. It is particularly true for those times when the resources of Defence Forces are insufficient to perform some task at hand and an asset, capability or infrastructure element is required as part of the economic and material services.

In addition to all of the above, it is also important to note that the non-government sector across the Alliance, putting their own market considerations first and focusing on internal operational efficiency, tends to dismantle capabilities that, while important for national resilience, are too costly to maintain and counterproductive in terms of productive profit. As a result, it is also clear that developing national resilience requires both a whole-of-government approach and support from society as a whole, with only limited results being achieved through purely governmental means.

Summarizing the provisions of the NBS on national resilience, its main contentual elements correctly reflect the requirements to be enforced at the federal and later domestic legislative level, resulting in a consistent technical content of the strategy document and legislation.

The concept of national resilience and its elements are most comprehensively reflected in the text of Government Decision 1393/2021 (VI. 24.) on Hungary's National Military Strategy (NKS).[366]

The NKS already underlines in the introduction that a changing security environment justifies the strengthening of national resilience, and the section on "Defence Capabilities" also shows that the acceleration of whole-of-government decision-making and the development of elements of national resilience has started. It is also underlined that an armed defence of the country can only be achieved through the activities of the

[365] Why does NATO military has to deal with Resilience? In Resilience through Civil Preparedness; Civil-Military Cooperation Centre of Excellence, The Hague, 2019. page 3. page *Resilience through Civil Preparedness Final approved Version.docx (cimic-coe.org).*
[366] Government Decision 1393/2021 (VI. 24.) on the National Military Strategy of Hungary under subheading 4.3 National Resilience (resilience).

Hungarian Defence Forces but due to the nature of challenges, the preparation of the whole nation, the development and strengthening of national resilience (resilience) is necessary in the complex system of defence.[367] The NKS also stresses that in order to prepare for kinetic and non-kinetic attacks as well as hybrid threats in a complex, unpredictable security environment, a national resilience capable of withstanding, averting, mitigating and eliminating the effects of disasters and maintaining the functioning of critical capabilities must be further developed. That capability in itself reduces the risk of a potential attack. Understandably, the approach of the NKS is already in line with the resilience approach of the Vbö., one important reason for this is that the strategy's authors had access to the proposed draft versions of the Vbö. and the open source studies that provided a technical background for it at an early stage of its preparation.[368]

The military strategy possesses a not explicitly military, yet crucial element, which is the section on civil preparedness,[369] which defines *civil*

[367] Government Decision 1393/2021 (VI. 24.) on the National Military Strategy of Hungary Chapter 4.2.
[368] *E.g. ETL Alex: The role of social resilience in ensuring security, Friends of Defence and Society, Székesfehérvár, 2020*; https://svkk.uni-nke.hu/document/svkk-uni-nke-hu-1506332684763/reziliencia_e-book.pdf;
FARKAS, Ádám – KÁDÁR, Pál: The development of special legal order regulation and military defence aspects in Public Law Foundations of Military Defence in Hungary (FARKAS, Ádám – KÁDÁR, Pál (eds)), Zrínyi, 2016; pp. 275-313. http://docplayer.hu/105743212-Magyarorszag-katonai-vedelmenek-kozjogi-alapjai.html;
FARKAS, ÁDÁM: A possible narrative for the renewal of our approach to defence regulation; In: FARKAS, Ádám – KELEMEN, Roland (eds.): Between Szkülla and Kharübdis - Studies on the theoretical and pragmatic issues of the special legal order and its international solutions; Budapest, Hungarian Military Law and Military Law Society (2020) 380 p. pp. 347-380., 34 p.
FARKAS, Ádám– SPITZER, Jenő: The information age and some issues of state resilience; Defence Security Regulatory and Governance Workshop Studies 2021/18.
SZAKALI, Miklós – SZŰCS, Endre: The emergence and evolution of defence design models, in: Military Engineer, 2017/1.; p. 24-40.
[369] For an understanding of the main aspects of this and how it is evolving, see Joëlle GARRIAUD-MAYLAM: Enhancing The Resilience Of Allied Societies Through Civil Preparedness (Preliminary Draft General Report); NATO Parliamentary Assembly, Committee On The Civil Dimension Of Security, 2021 *ENHANCING THE*

preparedness as a task of the country's national defence system and links it directly to the first element of NATO's resilience requirements, *"ensuring continuity of governance (administration) and services provided by critical system elements".* That formulation, not only at the level of legislation but also at the level of a strategic document, orientates professional work and serves as a kind of guideline for the formulation of proposals.

The strategy identifies the peacetime preparedness of civil society actors as one of the most important means to achieve national resilience. According to the NKS in force at the time of writing,[370] the coordination of civil preparedness tasks between the civil and military sides to strengthen and develop national resilience is carried out within the system of defence administration, which is based on the commencement of the Vbö. and the provisions of Government Decree 400/2022. (X. 21.) on the Rules of Planning for Defence and Security Purposes, but it will obviously have to be reconsidered,in view of the fact that the Defence Act no longer contains a provision on defence administration, the Minister of Defence is only responsible for coordinating the tasks of military preparedness necessary to strengthen national resilience and for defining the military requirements and needs related to the tasks of civil preparedness. However, in parallel, the Vbö. explicitly refers[371] the question to the responsibility of the government[372] and the coordination competence of the central body of the defence and security

RESILIENCE OF ALLIED SOCIETIES THROUGH CIVIL PREPAREDNESS (nato-pa.int).

[370] Summer 2023.

[371] Article 52 [Central Body of Defence and Security Administration] (...) f) coordinate the planning and performance of tasks related to the promotion and development of national resilience;
pursuant to Article 3 of Government Decree 337/2022 (IX. 7.) on the Defence Administration Office, the central body of defence and security administration

[372] Art. 46 (1) [The Government] (...) h) shall define the programme for the development of national resilience and shall direct its coordinated implementation.

administration, while obliging all organisations[373] to enforce the system of criteria.

The NKS also states that an important condition for strengthening resilience is to enhance the performance of the Hungarian national economy and national defence industrial capabilities. That aspect seems obvious in itself but it is worth pointing at the rightly recognised context that resilience objectives cannot be achieved by administrative and conventional military means alone, since national economy is the background that can provide the necessary resources for this, and if not, or only partially, national resilience objectives cannot be met.

An important element of the strategy in the context of national resilience is that it intends for that the Hungarian Defence Forces should be prepared to increase resilience with military capabilities in addition to classical military tasks. The details of that are not described in the document but the presentation of the task in itself foreshadows the trend towards a more complex use of military force in non-military tasks,[374] as confirmed by several renowned experts.[375]

Moving beyond the temporality of the regulations, the rules of national resilience found in the Vbö. no longer contain anything surprisingly new in light of the above history and context. However, the regulations are nevertheless of epochal significance. The novelty of the provisions lies, on the one hand, in the fact that the seven basic requirements laid down by NATO are given a Hungarian formulation declared in an act, supplemented on the other hand by clarifications and related

[373] See: Article 42 (1) of the Vbö.

[374] Regarding the expansion of military tasks, see Szabolcs TILL: Perspective directions of the Hungarian Defence Forces' tasks in the 2021-2030 timeframe, linked to the vision of NATO's new strategic concept; Defence Security Regulatory and Governance Workshop Studies 2021/1. *p.* 4-26. https://tinyurl.hu/L1v4 [375] On the practical side, examples include the involvement of soldiers in the fight against pandemics, in vaccination programmes or in supporting the operation of health institutions and companies, and in strengthening cooperation with these organisations.

[375] On the practical side, examples include the involvement of soldiers in the fight against pandemics, in vaccination programmes or in supporting the operation of health institutions and companies, and in strengthening cooperation with these organisations.

requirements that make the importance of the issue more obvious than ever before.

The seven core requirements, which are already well established in the legislation, represent the criteria in NATO's approach to defining the areas of mission delivery related to national resilience, as follows:[376]

> a) ensuring the continuity of state functioning, governance and essential government services as defined in the Constitution,
>
> b) developing a flexible, resilient energy system and energy security solutions that are adaptable to the challenges,
>
> c) the ability to effectively manage uncontrolled mass movements of persons,
>
> d) developing resilient and responsive systems to maintain basic living and health conditions, ensuring the continuity of vital systems essential to meet the basic needs of society,
>
> e) the ability to deal with mass casualty incidents,
>
> f) developing and operating a flexible and responsive infocommunications system,
>
> g) developing and operating a flexible and responsive transport system.

However, the content of the above seven paragraphs is not set in stone, and the Alliance itself has repeatedly revised the list it has drawn up. In Madrid, for example, the 2022 NATO summit reaffirmed the area[377] and in 2019, the issue of the assuredness and sustainability of 5G technology was explicitly highlighted[378] in the context of communications

[376] Article 42 (2) of the Vbö.

377 Madrid Summit Declaration (Madrid 29 June 2022) Point 10, NATO; NATO - Official text: Madrid Summit Declaration issued by NATO Heads of State and Government (2022), 29-Jun-2022 and NATO Strategic Concept 2022.

[378] See GARRIAUD-MAYLAM ibid., p. 37; p. 8.

resilience.[379] Thus, the above-mentioned text of the Vbö. does not use a literal translation of the list but rather aims for content-topic identity and flexibility.

In addition to the list often referred to in our research, an eighth element[380] is also added at the level of the law, which facilitates the enforceability of all the preceding requirements by not only mentioning the high degree of professional preparation and commitment of the personnel of the bodies involved in defence and security tasks but also by establishing an obligation towards the persons concerned to develop this preparation both in organisational and individual aspects, and ensure the appropriate conditions and individual attitude.

However, strengthening national resilience cannot be developed through declarative provisions at the legal regulatory level alone; it must be underpinned by institutional, human, and other conditions. The obligation of the Government to coordinate the tasks of national resilience, which it performs through the central body of defence and security administration, the Defence Management Office, is included in the legislation as a guarantee for that.

The overall declared objective of the national resilience system is to strengthen *"the country's independence, territorial integrity, stability, prevention of attacks against public order and security, law and order, safety of life and property, prevention of natural and industrial disasters, response to attacks or natural and industrial disasters"* through social preparedness, regulation and public administration.

The development of resilience as a general requirement also seems to be strengthened in that the legislation contains a specific set of criteria, delimiting the areas along which the task must be carried out. In that

[379] For more see GILLI Andrea - BECHIS, Francesco: NATO and the 5G challenge; in NATO Review; 30 September 2020; *NATO Review - NATO and the 5G challenge*
[380] Article 42 (2) The areas of the performance of tasks related to those referred to in paragraph (1) are: (...) h) the high degree of professional preparation and dedication of the personnel of the bodies involved in defence and security tasks.

context, the requirement to develop the capabilities necessary for defence and security tasks in a coordinated way is added to the requirement to ensure effective, modern defence and security interests, which also support civilian objectives. Another new element is an increased involvement of non-state actors, the professional reasons for which are based on the above-mentioned recognition that in a globalised world the operation of defence structures cannot be independent from the civilian sphere, either in terms of the use and mobilisation of civilian capabilities that can be understood in military terms, or because of the development or the interdependence and mutual impact of personnel and economic interdependence.[381]

The management of actual crisis situations and special legal events, as well as the strengthening of the population's defence and security awareness, which are increasingly inseparable, were also included. It is not possible to carry out defence operations successfully against the will of the majority of the citizens concerned, and communication has an important role to play in that respect, which is not highlighted in the legislation but can be illustrated by numerous examples from practice.[382]

In the context of resilience, we must also remember that we are part of an alliance system, which also entails obligations in this area, so the specific tasks of resilience must be planned and implemented with these in mind, avoiding unnecessary duplication where possible.

Within national resilience, increased attention must be paid to a continued functioning of vital systems that are essential to the provision of basic needs of society, without which not only public support may be lost but government crisis management may also become impossible. A related

[381] To understand the professional why, see Nick S.T. THEAKSTON: Resilience in Finland: lessons for NATO; NATO Defence College; The College Series 2020 No. 7. Rome, 2020; pp.3-11.For more international examples, see also.
[382] That was the case during the pandemic with the website koronavirus.gov.hu, but the weekly government newsletter serves a similar purpose.

requirement is that efforts should also be made to prevent disasters and minimise risks.

4. Expected domestic trends in the development of national resilience

From the situation of regulation as outlined above, and from current developments in international security space, trends in the development of domestic resilience can also be forecast.

Resilience is expected to play an increasing role in international regulation and allied cooperation, as well as in activities of supranational organisations, but we need to prepare for much bigger and faster changes in the domestic environment. That is not only because decision-making in large international systems requires more consultation and is made much more difficult by the activities of various lobby groups: the entry into force of the Vbö. represents a turning point in domestic defence and security regulation and an important benchmark which makes it possible to carry out a comprehensive reform across the whole administration and the broadest sections of society.

Considering that the Vbö. is, in many respects, a framework[383] that provides an umbrella for dealing with all defence and security incidents across the widest spectrum of threats and challenges, its creation has triggered a regulatory process that will result in a renewal of the whole system. Some elements of that have already been published,[384] but other

[383] Article 1 The defence and security of Hungary is a national matter on which the survival and development of the nation, the enforcement of community and individual rights are based, therefore the legal provisions related to the maintenance and development of the defence and security of the Hungarian nation shall be determined in the light of this Act.
[384] Act CXL of 2021 on National Defence and the Hungarian Defence Forces, Act CXXI of 2021 Amending Certain Acts on Internal Affairs in Connection with the Ninth Amendment to the Fundamental Law and Act XCIII of 2021 on the Coordination of Defence and Security Activities, Act VII of 2022 Amending Certain Acts in Connection with National Defence, Economic Development and Government Administration.

possible development elements have not yet been[385] supported for various technical reasons.

The complexity of the international security system and the ability to deal with situations arising from rapidly changing challenges also require that the domestic crisis management process be significantly more transparent and responsive, which can be achieved partly by simplifying and standardising procedures. To this end, it is necessary to complete a working process to review procedures that currently run independently and are structured with different logics but can be linked together at the level of incident management. The simplified procedures will then need to be practised to reach a level of readiness by the implementing and decision-making staff, which will directly strengthen the continuity of governance and government services (in this case the associated and enabling decision-making process) as set out in the first point of the National Resilience Requirements Catalogue.

Another expected trend is that the interplay between the elements of each type of crisis will increase, ultimately leading to a situation where a given challenge, previously dealt with within a sector, will require whole-of-government attention and central coordination of crisis management will be strengthened. The Vbö. also anticipates this by establishing a specific crisis management legal instrument - the Coordinated Defence Action[386] , discussed in more detail later in this volume - to deal with such situations in the normal course of law, and by providing for the establishment of a national incident management centre run by a central body of the defence and security administration, as opposed to an *ad hoc* crisis management

[385] Such technical considerations included the complexity and deep embeddedness of the sector's regulation in the EU regulatory framework (see supply issues related to various energy sources), or aspects related to the management of the emergency that had just been declared. Obviously, it is not practical to fundamentally reform the relevant regulatory system in the middle of a pandemic, as the impact assessment of its direct operational consequences cannot be properly carried out in a tense system under border pressure, just as in some areas - in the case of the Russia-Ukraine war - life itself has 'preceded' and generated intervention at the level of the constitution, as was the case with the tenth amendment to the Fundamental Law.
[386] Vbö. article 74.

operation based on the infrastructure of a sector, which was previously typical.

All in all, we can expect - at least in the short term for certain - a kind of continuous crisis management and specific detailed regulation as a normal state of affairs, and in the medium term it will evolve into normal functioning. The issue of security becomes more important in times of crisis, and citizens are willing to give up restrictions and certain legal guarantees ensuring their safety in order to continue their daily lives in a normal way or at least close to it.[387] The future of resilience will also have to take this effect into account, as it is likely that a number of regulatory elements will emerge that were previously unheard of in a market economy under the rule of law but which will be in demand in the future.

The current threat of a European energy crisis[388] as a consequence of the Russia-Ukraine war and a not excludable global food shortage[389] also suggests that certain aspects of national resilience are likely to be valued by political and economic decision-makers and as a result will receive significantly more attention. That can be counterproductive in some cases, as cooperation, business, planned development or system change in the normal course of operations can be achieved much more easily and smoothly, and sometimes a lower level of decision-making, than when almost all elements of the issue globally are in the spotlight.[390]

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[387] The USA PATRIOT Act of 2001 (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001), adopted in the United States in the wake of the attacks of 11 September 2001, is a foreign example of that, but in a broader sense, the continuous expansion of the constitutional special legal order in Hungary (unexpected attack, preventive defence situation, terrorist threat), and through them the constitutional expansion of the possibility of limiting rights, can also be called for.

388 Global impact of war in Ukraine: energy crisis; United Nations; 2022.08.03. BRIEF NO.3 - Global impact of war in Ukraine: energy crisis (unctad.org)

[389] TISZÓCZI, Roland: A triple blow hits world food production; in World Economy; *A triple blow hits world food production (vg.hu*)

[390] A striking example of that is the summer of 2022, when steps to fill up domestic gas reserves became a European issue, which would hardly have had international news value without the war: FINANCIAL TIMES: "Hungary sends foreign minister to Moscow to

According to security forecasts, the volume of uncontrolled mass movements in the region will also increase,[391] and depending on the level of uncontrolled movements, the solutions used so far will no longer be sufficient, so the technical content of this aspect of resilience also calls for new solutions. One of the first visible elements of that is the creation of a Border Guard Regiment[392] within the Standby Police, which is likely to have a number of other professional consequences for the defence system as a whole. There is no doubt that this change will open a new chapter for the Hungarian Defence Forces as well, with military training and preparation for basic tasks becoming the main focus of activity, which will directly strengthen the defence capabilities of our country.

An important means of strengthening national resilience is to involve as broad a section of society as possible in the debate on defence and security issues. That kind of openness has an impact not on the professional appropriateness of decisions but on their feasibility and enforceability. Its importance lies in the fact that if the people concerned are involved in the preparation of the measures, if they have the opportunity to learn about the facts that threaten our security and assess their significance, implementation and enforcement of decisions will be considerably easier and the resistance resulting from lack of information or fear of the unknown will be lower. It is also expected that the highest level of intervention in this area also will be necessary, where appropriate, to develop the population's capacity for self-defence.

A further expected direction for developing national resilience is an increasing use of digitalisation and artificial intelligence and the related

ask Russia for more gas" (21 July, 2022) Financial Times (ft.com); REUTERS: Hungary in talks with Russia about buying more gas | Reuters.com (21 July, 2022); Sándor KOMÓCSIN-SZABÓ Dániel KOMÓCSIN..html

391 According to the Police, in 2017, around 500 illegal border crossers attempted to enter Hungary every week, in 2020, around 1000 per week, and in 2022, an average of 4000 per week. *Evolution of illegal migration - weekly breakdown | Official website of the Hungarian Police (police.hu)*

392 The legal status issues are covered by Government Decree 244/2022 (VII. 8.) on the rules for contracted border guards belonging to the body established to perform general police tasks.

resilience issues. These technological advances enable rapid process planning and modelling of an almost unforeseeable complexity, which can be used to speed up professional decision-making during preparedness and crisis situations, predict an expectable impact of a proposed intervention, avoid uninstablished decisions, avoid wasting resources and, where appropriate, save human lives. In view of that, the Vbö. requires the government to promote modern data management, data use and data protection as for its own bodies, private and legal persons, as well as well as monitor the evolution of defence and security challenges and technologies. This is the basis for preventing the emergence of threats or the lack of preparedness for threats that cannot be avoided and are not yet known, and the role of artificial intelligence in this process cannot be neglected. However, it also follows that these systems must be properly protected, since their manipulation or corruption not only results in the malfunctioning of software but can have a decisive impact on decision-making as a whole. In the field of critical infrastructure protection, the issues of protecting associated elements will become more pronounced in light of this.

As a trend of resilience, we can also expect to see an effort to differentiate protection issues and make them as widely available as possible to people and organisations. Among the organisations, the role of defence and security organisations under the Vbö. and other organisations involved in the performance of defence and security functions will be a priority,[393] with a comprehensive regulatory framework but also with increased public involvement, as is the practice in countries with a stronger tradition of a *'whole of society'* approach.[394] This is likely to take the form of everyday elements such as communication campaigns, education in

[393] Vbö. articles 48, 49.
[394] Traditionally, the Scandinavian countries are highlighted, but the approach of Canada, Switzerland or the United Kingdom is similar in its main objectives.

primary schools, or publications to promote resilience,[395] as well as recommendations to the public.

In addition to the above, there is great potential in the domestic approach to resilience, in making good use of the role of local authorities in addressing specific challenges. They represent the channel through which local population can be most easily reached, and through which some elements of preparedness and response could be more effectively provided by the involvement of municipal institutions. In the event of an unforeseen security incident, it is the local authority, alongside defence and security organisations, that is the first to be in a position to make decisions. For this management task to be successful, a central body of defence and security management is/can be of key importance, which can strengthen the development of national resilience by coordinating and recommending resilience programmes, organising and coordinating preparedness.

We also identify a growing importance of cross-border cooperation as an expected trend in national resilience. This is particularly important in the areas of transport and communication networks, energy supply, food and drinking water supply.

Notwithstanding, it is also clear that future developments and preparedness trends need to be guided by extensive risk analysis, monitoring and experience work, where increased cooperation would also be beneficial. It would also be helpful to include a requirement for the planning of specific activities to explicitly include resilience considerations, possibly with funding at an allied or EU level.

In the area of national resilience, we can also expect an expansion of the catalogue of requirements. Issues such as global warming,

[395] For example, in Germany, BROUWERS Klaus: Guide for Emergency Preparedness and Correct Action in Emergency Situations; Bonn; 2018, Bundesamt für Bevölkerungsschutz und Katastrophenhilfe; *ratgeber-englisch-disasters-alarm.pdf (bund.de)*; or in Austria, Bevorratungs Ratgeber - Denk daran, schaf Vorrat an; Zivilschutz Österreich, Wien, 2016, *Zivilschutzverband_Bevorratung_V3_web.pdf (siz.cc*)

overpopulation of the world or extreme poverty have not been explicitly included so far only because their immediate impact is not yet critical but the issue of preparing for them should not be underestimated. It is also interesting to see that, in the light of global processes and cross-border supply networks, the issue of national resilience may in the future, become a multi-stakeholder system of an international security system rather than a truly national one.

5. Summary

National resilience is a set of requirements that goes far beyond classical military security. Achievements in areas of specialisation developed in accordance with the basic requirements set out in the Act not only strengthen the security of the country but also contribute to enhancing the collective security of the European Union and NATO. Resilience has become the buzzword of our time because it is fundamentally about strengthening national sovereignty, yet today it relies mainly on national self-reliance and domestic resources, while also generating cross-border security effects, which we need more than ever in the face of 21st-century security threats - it can also be a driver of international security cooperation in the longer term, even without actual military action.

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VII.
Management of defence and security activities - Chapter VI of the Vbö.

1. Introduction

The Act XCIII of 2021 on the Coordination of Defence and Security Activities (Act XCIII of 2021 or Vbö.) integrates as a key element of the system of defence and security regulation a number of professional sub-areas that were previously contained in the domestic legal system in a scattered and sometimes apparently competing manner. This also includes the management of defence and security activities, which were previously covered by Act CXIII of 2011 on National Defence and the Hungarian Defence Forces and on Measures that May Be Introduced in Special Legal Regimes[396] and Act CXXVIII of 2011 on Disaster Management and the Amendment of Certain Related Acts.[397]

2. Why is a governance system necessary?

There is a large body of literature that analyses the concept of governance as a management activity.[398] Management plays a decisive role in the range of administrative functions[399]; without it, given the cyclical nature

[396] Chapters 17-20 and Chapter III of Act CXIII of 2011 (Hvt2011).
[397] Act CXXVIII of 2011, Articles 10-16.
[398] For a summary overview, see FAZEKASNÉ PÁL, Emese: Reflections on the Theory of Public Administration Management and Supervision; in Pro Publico Bono - Hungarian Public Administration; 2018/3; pages 4-21.
[399] See in this context the so-called POSDCORB acronym (Planning, Organizing, Staffing, Directing, Coordinating, Reporting, Budgeting) and its explanation in GULICK, LUTHER-URWICK, Lyndell: Notes on The Theory of Organization; New York, Columbia University Institute of Public Administration, 1937, p. 13,
Papers on the science of administration (archive.org) or on the conceptual nature of management management FAYOL, Henry: Industrial and General Management; Budapest, KJK, 1984; pp. 64 and 157.

of administrative activity[400], all other activities would lose their content, since without a definition of objectives and the establishment of a framework for implementation, there would be nothing to coordinate or control, i.e. management as a planning and organising activity would become empty and it would not be possible to ensure its functioning.

The detailed rules of the governance system must also be defined in relation to defence and security activities, a general division of tasks within the state organisation, defined at constitutional level, is not in itself sufficient for the operation of the system, and the detailed rules for the various areas of expertise must be developed with that in mind. It all has been done by the legislator in the Vbö.

Public administration is essentially a set of activities which result in the state organisation being able to maintain its functioning,[401] thus fulfilling its basic function, which in a more distant context also guarantees the autonomous and sovereign functioning of the state, its survival. It can be said that without functioning public administration as a large unit, it is not possible to organise the defence of homeland or to maintain its security, and without a management system as part of administrative activity, it is not possible to carry out additional tasks related to law and order, national defence or the fulfilment of defence obligations, or even to any segment of security, or to prepare for defence.

[400] KALAS, Tibor: The Administration; In: Public Administration Law 1. Virtuóz Kiadó, Budapest, 2006; page 14

[401] For more information see BALÁZS, István: "A közigazgatás" in JAKAB, András – FEKETE, Balázs (eds.): Internet Encyclopaedia of Legal Studies 2.1. *https://ijoten.hu/szocikk/a-kozigazgatas#block-254* and MAGYARY, Zoltán: Hungarian Public Administration, Budapest, Royal Hungarian University Press, 1942, pp. 39-42.

3. What is covered by, and what is the content of a defence and security management system?

The system of defence and security management[402] is a complex system that pervades the entire state organisation, within which the main elements of the regulation of the system of defence and security management are set out in the framework of the Vbö.

Defence and security management is a system of tasks and organisation within public administration, which is a centrally coordinated planning, implementation and control activity of state bodies established under the direction of the Government or designated by law for such tasks, to counter threats and attacks against Hungary and its population, in particular with regard to the management of crisis situations, the promulgation of special legislation and tasks related to and preparation for the enhancement of civil and state defence and security awareness, including defence administration and military administration forming part of it, as well as the administration of related law enforcement agencies.[403]

The above statutory definition makes it clear that defence and security administration provides the broadest framework for security regulation in the country.

Within the system of administration, a further breakdown of the division of tasks within the state organisation, based on constitutional law, is discussed in the organisational breakdown of the management of defence and security.[404]

[402] On the former structure of defence administration, see Júlia HORNYACSEK, The system of defence administration tasks, the personnel and technical conditions of implementation, possible methods and tools; in Practical experiences of the operation of defence administration in the light of today's challenges (ed: Júlia HORNYACSEK), Dialóg Campus, 2019. pp.87-99.
[403] See Article 5 section 16, point 16.
[404] Vbö. sections 44-50.

3.1. The National Assembly

At the top of the administrative system is the Parliament, the representative body of the people. Its governance tasks in the field of defence and security should be seen not only in terms of the specific powers provided for in the Constitution but also in terms of the general powers at the level of the Constitution which determine the way in which the field operates. First and foremost among them are the constitutional and legislative powers themselves, since the foundations of the entire system are laid by the Fundamental Law and related, largely cardinal laws. It should be emphasised that the requirement of the cardinality of the individual regulatory areas is itself dependent on the Fundamental Law and is thus based on a decision by Parliament.

Parliament's power to adopt the budget can also be seen as a management power. It is true that it is also a legislative task from the point of view that it is done by law but in terms of content, the resources allocated this way not only provide an organisational and operational framework but also enable an actual implementation of tasks. The technical significance of that lies in the fact that if Parliament does not allocate resources to a constitutionally prescribed task, it is essentially foregoing the implementation of the activity without taking a specific decision to that effect.

In the light of all this, the Parliament is clearly the decisive actor in defence and security administration, without its decision - its legislation - the other elements of the system could not exist, nor could their tasks, powers and competences be defined, i.e. the Parliament also fulfils the most important one of classical powers of governance, the constitutive role.

The rule of governance related to defence and security management is the right to take all decisions concerning special legal orders[405], as well as

[405] That is mainly the situation in the case of parliamentary decisions relating to the power of the Government to promulgate emergency measures by decree, while in other special legal systems the right of promulgation is also vested in Parliament.

decisions on martial law or peace agreements, which result in an administrative system receiving an impulse on the implementation side.

In addition to constitutional powers, the governance powers at the level of the Vbö. are also of crucial importance. The reform of defence and security regulation, which entered into force in November 2022, for the first time raised to the level of law the obligation of the Parliament to define the fundamental principles of the country's security and defence policy and the main directions of their implementation on the basis of the Government's proposal. Such a Parliamentary resolution is to be found in previously existing rules,[406] but its creation was not required by law, in view of which the starting point of the defence security planning system was essentially a non-binding element. One of the main innovations of the Vbö. is that it incorporates all planning documents into a system, thereby establishing and requiring elements of a system that can be continuously developed, going well beyond *ad hoc* organisational and operational defence measures, without completely excluding the use of *ad hoc* solutions in favour of flexibility. The function of the Principles of Security and Defence Policy to be established by Parliament after the entry into force of the Vbö. is to provide guidance to all actors of state organisation on the basic principles of defence and security policy in our country, and set out the values and principles along which further regulation and implementation are to be planned. From a legislative point of view, however, we must see that this document, as a parliamentary resolution, is not a law but an instrument of public law regulating the organisation of public law,[407] in which the Parliament could at most define its own programme of action.[408] However, it can be stated that the

[406] Parliamentary Resolution 94/1998 (XII. 29.) on the Principles of the Security and Defence Policy of the Republic of Hungary.
[407] See Article 23 (1) (a) of Act CXXX of 2010 on Legislation (Act on Legislation).
[408] In that sense, the second sentence of point 17 of the current Parliamentary Resolution 94/1998 (XII. 29.) seems to go beyond the mandate of the Act: "The Government of the Republic of Hungary shall be responsible for the elaboration of the national security strategy and the national military strategy, for their revision as necessary, and for the implementation of the tasks arising from them." - It is true that at the time of the

appearance of this type of content in the regulatory system of state organisation, even without legally binding force, acts as a kind of point of orientation, helping to ensure uniform operation and the preparation of related decisions falling within the competence of other bodies.

The Parliament can only exercise its powers of defence and security management properly if it has the basic information necessary to do so. In order to ensure that, the law requires the Government to report annually to the committees of Parliament with relevant responsibilities on the implementation of the overall government's tasks of preparation and provision of defence and security, and on the state of preparedness as well as state of defence and security in the country.[409] In addition to the annual report, the committees may also request information on measures taken by the Government in the management of defence and security activities, have the right to evaluate them, and may even initiate a legislative process independently of or as a result of the annual report.[410]

The Parliament's additional powers of governance in the context of the country's defence and security can be determined by other laws, and in this context, additional decision-making, accountability and control powers can be exercised,[411] which also allow for further intervention, ranging from statements of a political nature, legislation or a motion for the proclamation of a special legal order to a motion of no confidence in the Government.

3.2. The President of the Republic

The President of the Republic is the next element of the coordinated management system for defence and security activities. The President of the Republic's governance role has been reduced as a result of the ninth

adoption of the decision, Article 46(1) of Act XI of 1987 on Legislation was still applicable, but that provision cannot be applied without discussion to the above situation.

[409] Vbö. section 46 paragraph (4).

[410] Article 6(1) of the Fundamental Law.

[411] See, for example, Article 14 of Act CXXV of 1995 on National Security Services or the provisions of Article 6 (5) of Act CXL of 2021 on Defence and the Hungarian Defence Forces.

amendment to the Fundamental Law, and the technical content and reasons for that change, as well as his or her powers to promulgate special legislation, to obstruct Parliament and other related powers, with particular reference to the position of the person entitled to take emergency measures, are dealt with in the following chapters of this volume.

The role of the President of the Republic in the organisation of the State is linked to the system of defence and security management in a number of ways beyond the scope of his or her constitutional functions. Unlike the previous rules[412], the President of the Republic reviews and gives his opinion on the draft Principles of Security and Defence Policy of the National Assembly and the draft National Security Strategy to be adopted by the Government before their adoption. This regulation provides a wider opportunity for the President of the Republic to express his personal position on fundamental issues which will permeate the whole of the administration in the future and which, by being a central element of planning, may have an impact on legislation and, through it, fundamental national issues. The preliminary opinion can also be a way of ensuring that any subsequent regulatory proposal derived from these planning documents is likely to contain content that is clearly contrary to the Fundamental Law, and that these can be eliminated in good time, before an actual legislation is adopted.

The right of the President of the Republic to request information from the Government[413] is essentially identical to the previous Defence Act[414], with the significant extension that in the future information may not only concern matters related to the operation of Defence Forces but any matter related to the defence and security of the country. That extension is also intended to reflect a new approach to the system of defence and security

[412] Under the previous legislation, the President of the Republic had no such power of address.
[413] Vbö. section 45 paragraph (2).
[414] Paragraph (3) of Article 20 of Act CXIII of 2011 on National Defence and the Hungarian Defence Forces and on the Measures that May Be Introduced in Special Legal Regimes.

management, moving away from a "domestic" approach linked to sectors and individual organisations towards a complex approach that is more pervasive throughout the State and society, and emphasising the whole-of-government aspect of defence.

3.3. The Government

The Government is undoubtedly the most decisive element in the system for the coordinated management of defence and security. As has been pointed out on several occasions, the key to an effective functioning of the defence and security system is rapid and organised action in the event of a defence and security incident or imminent threat thereof, through direct command intervention. The role of the Government in this respect is not based solely on the coordination of tasks and measures within the executive branch: the Vbö. also grants it powers to ensure cooperation with bodies not under the control of the Government.

The central role is also reinforced by the provision that the Government shall submit to Parliament the proposal for a resolution on the Basic Principles of Security and Defence Policy, discussed above. In addition, the government is also responsible for the management and budgeting of the entire defence and security planning system[415], which aims to maintain and prepare for the defence and security of the country.

Among the Government's management powers, coordination elements play a prominent role, which also cover governmental and international tasks of cooperation related to defence and security, tasks arising from membership of an alliance, preparation for their implementation, and coordination of preparation and task provision for defence and security purposes but in a broader sense, it also includes coordination of all decision-preparation activities and related elements of the Government's agenda-based operations.

[415] These provisions are set out in Chapter III of the Vbö., the detailed rules are contained in Government Decree 400/2022 (X. 21.) on the rules of planning for security and safety purposes.

However, the most important tool for the executive is, by all means, the regulatory, interventionist and decision-making powers granted to it by law, which enable it to manage the system in a substantive way.

That will include the definition of tasks of civil protection preparedness or the requirements of national economy for defence and security preparedness, or, if the situation so requires, a decision to mobilise the economy itself.

In addition, the Government's powers of governance do not only cover the organisational system of administration but also the definition of the coordinated preparation and performance of tasks of various bodies under its control, such as the Hungarian Defence Forces, law enforcement agencies and national security services, as well as the regulation of the framework for exceptional decision-making necessary for the management of defence and security incidents related to their operation,[416] but it also includes rules governing the functioning of the government surveillance system.[417]

Among the powers of governance, the issue of national resilience appears for the first time as a statutory rule in the Vbö. This includes governmental powers to maintain continuity of state operations and governance as well as ensure crisis and special legal order operations, complemented by the development of a programme for the development of national resilience and the management of its coordinated implementation.[418] The continuity of government services is also ensured by the provision that the Government may, by decree, oblige certain companies to provide services to the defence, law enforcement, national security and other state armed forces.[419]

[416] It includes, as a 21st century novelty, the defence, attack prevention and international operations tasks of the cyberspace operations force.
[417] See Government Decision No 1324/2011 (IX. 22.) on the establishment of a government monitoring system.
[418] Art. 5, paragraph 7; Art. 42; Art. 46 (1) (h).
[419] Article 46 (1) (p) of the Act.

One of the conceptual focal points of the administrative approach adopted by the Vbö. is the issue of control, in which the Government ensures the control of the performance of its tasks at sectoral and organisational level in the field of preparedness and the provision of tasks for defence and security purposes. It is necessary because the complexity of security challenges not only implies that they cannot be dealt with solely within a sectoral framework but also requires that procedures, human and material resources, pre-positioned and prepared, established for the whole of government to deal with defence and security incidents are appropriate and adequate to the situation at hand. However, it could only be controlled in part at sectoral level, and the task has therefore been devolved to the level of the whole of government.

The right of government to decide on coordinated defence action and related measures should be highlighted as a key management power. We are discussing the institution of coordinated defence action separately in Chapter XIII of our volume[420] but here we would just like to emphasise that this regulatory solution provides the basis for political and professional discretion in individual situations, and creates the possibility for the government to organise defence and the maintenance and restoration of security in a situation requiring treatment that goes beyond sectoral crisis management rules but does not reach the level of a special legal limitation.

All the above governmental tasks, the preparation of decisions and the central coordination of the management system are carried out by the central body of defence and security administration, which ensures the initiation of relevant technical issues and their channelling into the

[420] Article 74 (1): In the event of a serious or protracted defence and security incident, the Government may decide by decree to order a coordinated defence action if the handling of the incident involves the joint competence of several defence and security organisations or public administration bodies, and requires the application of measures specified in this Act in the event of a coordinated defence action or in the NATO Crisis Response System.

appropriate decision-making mechanism according to their content and level.

The central body of defence and security administration is the Defence Administration Office, a central budgetary body operating as a central office under the authority of the Minister heading the Prime Minister's Cabinet.[421] From its establishment until the entry into force of the Vbö., the Defence Administration Office was responsible for the preparation of regulations directly underpinning the functioning of the central body, for the coordination of sectoral proposals put forward in the framework of the reform of the defence and security management regulatory framework and for the organisation of related preparatory activities, and since November 2022 it has been performing the tasks under Article 52 of the Vbö.[422]

[421] See Government Decree 337/2022 (IX. 7.) on the Defence Administration Office.
[422] Article 52 of the Act Central body for the administration of defence and security
a) coordinate the administrative tasks related to Hungary's security and defence interests and their performance,
(b) coordinate the tasks of security and safety planning specified in this Act in order to exercise the Government's management powers,
c) if the Government so decides, operate a national incident management centre for the purpose of incident management, whose main task is the professional coordination and harmonisation of all-governmental crisis management and the provision of special legal order during preparation periods and during defence and security incidents,
(d) coordinate the preparation of the whole of government for coordinated defence activities,
(e) prepare the requirements for the training of defence and security organisations and the staff of the public administration for defence and security purposes,
f) coordinate the planning and delivery of tasks related to the promotion and development of national resilience,
g) coordinate the establishment and maintenance of the special conditions necessary for the Government's operation in crisis situations and special legal orders, as provided for by Government Decree, and propose the budgetary resources required for this purpose,
(h) monitor and support scientific research contributing to the promotion of defence and security interests and related developments, as well as to the identification of technological and societal challenges related to security and defence,
(i) monitor the provision of and preparedness for defence and security in ministries, government headquarters and central offices,
(j) coordinate the sectoral tasks of special legal preparation, and
(k) perform such other duties as may be assigned to it by law.

The implementation of the overall governmental tasks of preparation and provision of defence and security is a matter of importance that should not be judged solely at the level of government but also requires regular assessment of information at other levels of governance. To that end, the Government reports annually to the committees of the National Assembly with relevant responsibilities on the state of preparedness and security of the country. At the time of publication of this volume, no such report has yet been submitted under the Vbö., so there is no experience as to the structure and content of the report, but it is likely that, given the high sensitivity of the subject to national security, such a report would have to contain highly classified information. It is also foreseeable that the report will have close links with the Report on the Implementation of the National Defence Functions and on the Preparation, Status and Development of the Defence Forces[423] but will go well beyond its technical scope, likely to include an assessment of all the major issues of legal institutions and resilience issues established in the Vbö.

3.4. The Minister

At the next level of the defence and security management system are the ministers, who are responsible for the management of the defence and security preparedness and response activities of the bodies and sectors under their control and supervision regarding the sector under their responsibility. Management in this case is not a series of *ad hoc* decisions, the areas of responsibility being clearly defined by law, which is not only an option for ministers but also an obligation being accountable for.

In the framework of the above, the Minister shall define the professional requirements for the implementation of the defence and security tasks falling within his or her competence, as well as the arrangements for

[423] Act CXL of 2021 on Defence and the Hungarian Defence Forces section 6 paragraph (5).

cooperation between the bodies under his or her authority as well as defence and security organisations[424] and administration.

Among the ministerial powers, an important role is given to the obligation of cross-sectoral planning as an administrative activity, according to which the minister must ensure the development of sectoral documents[425] within the framework of higher-level planning documents for defence and security, including plans requiring cross-sectoral cooperation. It is also essential to provide for the obligation to cooperate and provide information on sectoral information to other bodies, particularly the central body of the defence and security administration, without which the central body would not be able to carry out its coordination tasks.

The regulation of the Vbö. has another provision of novelty, also binding on ministers, which orders the planning of implementation costs of defence and security tasks separately by sector within the overall budget, thus ensuring that such tasks are not given inadequate emphasis in addition to the many basic tasks that are charged to the ministries, which could lead to an undesirable reduction in the effectiveness of defence in the medium term. The experience of budget planning over the last thirty years shows that in an environment that appears secure, we tend to forget that it cannot be maintained and improved without adequate resources,[426] and that considerable improvement is complex, requires intervention in a number of related areas and takes time, which results in a need to launch

[424] Including the Hungarian Defence Forces, law enforcement agencies, national security services and the Parliamentary Guard.
[425] Various internal rules, action plans, development ideas, etc.
[426] Since Act C of 2017 on the 2018 Central Budget of Hungary, the appropriations for defence preparedness planned for similar purposes have been essentially unchanged, with HUF 497 million allocated to the central expenditure of defence and economic preparedness, which did not even allow for inflation, while the main budget of the Ministry of Defence chapter or the Ministry of Interior chapter increased several times over the same period. The Law XC of 2021 on the Central Budget of Hungary for 2022 provides the HM chapter with HUF 1,003,046.5 million, while in 2018 the same chapter had a budget of HUF 427,334.8 million. The same indicator for the BM chapter was HUF 876,304.9 million in 2022 and HUF 791,339.0 million in 2018. (A similar comparison for 2023 may be misleading, given the fact that the BM chapter includes appropriations for health.)

short term, large-scale and very costly sectoral development programmes, where it is also difficult to secure human resources in a timely manner, rather than a continually planned capacity maintenance and gradual development on regulatory, technical and human side.

In addition to the above, the Minister's management responsibilities in the area of defence and security also include activities related to the sectoral elements of the tasks relevant to national resilience. These include tasks related to the infrastructural housing and maintenance of installations relevant to defence and security, as well as tasks related to energy, transport, health, environment, electronic communications and information technology networks, and the operability of air, meteorological, chemical and radiation monitoring, signalling and alert systems. Provided that a coordinated and stable operation of these systems, which are cross-sectoral in their use and operation, can be ensured, the defence system of the country can be considered to be fundamentally sound.

As can be seen from the above, the Vbö. defines powers and tasks in relation to ministers that seem to be obvious, the novelty of the regulation is rather that it emphasises a subject-specific focus and a whole-of-government approach in terms of cross-sectoral cooperation and effects.

3.5. The defence and security organisations and other organisations involved in defence and security tasks

The law introduces several new generic terms in the field of safety and security. One of these is the category of defence and security organisations, which includes the Hungarian Defence Forces, law enforcement agencies, national security services and the Parliamentary Guard. These organisations have functions and responsibilities laid down in specific legislation,[427] but it is essential that their activities are coordinated and that there is a continuous flow of information between

[427] Act CXL of 2021 on Defence and the Hungarian Defence Forces, Act XXXIV of 1994 on the Police, Act CXXV of 1995 on National Security Services, Act XXXVI of 2012 on Parliament.

them and towards their managers. This requirement applies particularly – however, not only – to the prevention and management of threats and possible crises requiring immediate attention but the obligation to cooperate in such a way also enhances the operational effectiveness of the public body during the period of the consequences of events that have already occurred.

The Vbö. also provides that these organisations should not only ensure that they have an adequate standby force to deal with threats requiring an immediate response in order to fulfil their core mission but that the Vbö. should also ensure that as a framework, they must also be able to provide an appropriate capability, including on-call and stand-by services for defence and security decision-making or to perform tasks required in the context of defence and security obligations, coordinated defence action, NATO crisis response arrangements, the defence and security alert system and the immediate transition to a special legal order.

It is also an essential requirement for defence and security organisations that they must ensure that they have the appropriate internal planning and information for higher level defence and security planning documents in the context of their executive level responsibilities in the management system. An essential requirement for the full functioning of the defence and security management system and the organisation of effective protection is to ensure the necessary personnel, training and equipment to carry out the tasks, which can be provided primarily by a quality planning of defence and security organisations on the executive side. The plans drawn up this way, well thought-out and coordinated scenarios for defence, act as a kind of trigger for the other elements of management, influencing the management's terms of reference and other organisations involved in the performance of defence and security tasks.

Further organisations involved in defence and security[428] is a very broad umbrella term covering a very wide range of organisations. Given the complexity of the concept of security and the need for effective defence,

[428] Vbö. section 49.

it includes essentially all government bodies of administrations,[429] as well as local authorities and bodies under their control, the judiciary, the prosecution and the national news agency, the National Media and Infocommunications Authority, the Media Services Support and Asset Management Fund, the Hungarian Energy and Public Utility Regulatory Authority and the Hungarian National Bank, which are also indispensable.

Other entities involved in the performance of defence and security tasks, irrespective of their management and ownership structure or form of organisation, include healthcare providers and pharmaceutical supply bodies, educational, cultural and scientific institutions, transport, electronic communications, information technology and postal services, public utilities and utility services, as well as operators of all vital systems essential for the provision of basic needs of society. The Vbö. is the first rule at the legislative level[430] to provide for such a broad and in-depth definition of safety and, security and cooperation, and does so without closing the list,[431] anticipating that further elements may need to be included as the regulatory regime develops. This solution also ensures that a task imposed on an organisation, even by specific legislation, may result in that organisation being included in the scope of other organisations involved in the exercise of safety and security functions, with all the obligations and powers that entails.

As regards other organisations involved in defence and security tasks, a new obligation is introduced in the legislation to designate a defence and security official[432] and provide for the training of their staff in defence

[429] Government administrative bodies are defined in Article 2 of Act CXXV of 2018 on Government Administration.
[430] The Hvt. Article 11 contains similar provisions, but the scope of the organisations is much more focused and narrow.
[431] Any other body which is required by law to perform a protection and security function or to assist in the performance of a protection and security obligation is also considered an additional body involved in the performance of defence and security tasks under the Vbö.
[432] As a kind of historical predecessor of this provision, we can look at the former National Plans Office or the HM National Mobilisation Department's KR (military

and security management as required by law, in order to ensure effective cooperation with the defence and security administration. This kind of systematic development of defence and security awareness can bring significant results in the medium term and significantly strengthen the resilience of our country, especially considering that the legislation also imposes a number of obligations on the heads of governmental administrations[433] in relation to their own organisation, thus ensuring that the whole field is covered.

For further organisations involved in the performance of defence and security tasks, the Vbö. also requires them to plan and ensure the conditions for their continuous operation, provide for the protection of the population during armed conflicts, alert the population, maintain their specialised services related to defence and security tasks, i.e. they must be able to operate in a kind of crisis situation in addition to their ordinary time activities. This is not an exceptional requirement for the elements of

referent) liaison officers system. See PÁL, Germuska-Miklós, Horváth: The History of the Hungarian Defence Administration 1945-1990; Hungarian National Archives, Budapest 2020; pages 172, 175, 180, 245, 274.

[433] Section 50 of the Act rules that the head of a government administrative body shall be responsible for the management of the body under his/her authority and, in the case of the exercise of management powers, the bodies under his/her authority
(a) for the performance of its statutory security and safety functions and for monitoring the performance of those functions,
b) effective cooperation with security and safety organisations and the central body of the security and safety administration,
c) resource and budget planning tasks related to its defence and security functions,
d) for fulfilling its obligations to provide data for security and safety purposes,
(e) for meeting the statutory requirements for the further training of its staff in security and safety management,
(f) ensuring the conditions of operation for security and safety purposes, including the necessary planning and preparatory activities,
g) for the provision of and preparation for civil protection tasks in the event of armed conflicts,
h) for its assistance in informing and alerting the public for protection and security purposes, as provided by law,
i) for the fulfilment of its economic and material service obligations,
(j) preparing for and carrying out its tasks in the context of coordinated defence activities,
(k) preparing and implementing its specific legal tasks.

State organisation but it is an additional obligation for non-State bodies covered by the regulatory framework. This additional obligation is not unlimited, however, and only arises in the event of a specific legal provision, the rules for which are not yet known at the time of writing.[434]

The legislation also provides for an obligation to contribute to the development and implementation of measures necessary in the context of coordinated defence action and the implementation of regulations and measures issued during a special legal order, as well as to specific tasks aimed at strengthening national resilience, bearing in mind that the management of unforeseen crisis situations may require a level of expertise that is most practically available at central bodies through cooperation with organisations under Article 49 of the Act. It is essential to emphasise that a good part of these cooperation tasks must be contained in a law or government decree, i.e. the mandate and the task required are not purely arbitrary or notional.

By their very nature, civil society organisations, religious communities and charitable organisations also have a crucial role to play in defence and security tasks, where they may be involved on a voluntary basis in managing an extraordinary situation and its humanitarian consequences. These organisations can greatly relieve the burden on public authorities, which can then concentrate their efforts on the most serious threats.[435] An essential requirement introduced by the Vbö. is that NGOs, charities and religious communities should only be involved in a coordinated way by the defence and security administration, thus ensuring that assistance and support are channelled to where they are really needed.

[434] Government Decree 404/2022 (X. 24.) on the rules of security and safety training sets out a progressive training system, and does not provide for an exhaustive list of obligations in this area. It is likely that specific rules will emerge in relation to specific crisis situations, either in the context of concerted action in the field of defence or in the context of specific legislation.
[435] There are many practical examples, most recently in the humanitarian response to the wave of refugees following the Russia-Ukraine war - albeit before the Vbö. entering into force.

4. What are the benefits of integrated regulation and governance?

As can be seen from the above, the management system for defence and security activities is a large entity spanning the entire state organisation and national economy, which results in a number of direct and indirect professional advantages.

An integrated regulation is simpler and more transparent than a fragmented solution that preceded the ninth amendment to the Fundamental Law, which sought to cover the various branches of defence and security administration with different emphases and approaches from different sectors.[436] Integrated governance also ensures a clear overview of rules and regulations, and a clear set of responsibilities, which allows for coordinated planning and preparedness, and optimised cooperation between the organisations involved. As a result, it is expected that the provision of defence and security activities will be carried out at lower cost, without unnecessary duplication of effort or forms of work whose professional outcome will not ultimately lead to any meaningful intervention in the protection process, at least not in the legal environment.

An integrated regulation and management system should also guarantee that each activity is based on a common set of principles, that the coordination of individual activities is optimal and that any necessary sub-areas are not left unregulated, or that the content of some regulation becomes outdated faster than the changing security situation would allow it, due to inappropriate sectoral emphasis. An integrated system of regulation and governance, and particularly the Defence Council,[437] which has a key role in the functioning of government, and the central

[436] The previous regulatory framework did not provide for a complex approach, with individual crisis management and special legal rules being set out in a number of sectoral laws and implementing rules, as opposed to the comprehensive framework approach of the Vbö. For example, emergency rules were set out in disaster management regulation and state of emergency rules in the Defence Act, as opposed to the unified system of the Vbö.

[437] See Government Decision 1352/2022 (VII. 21.) on the Government's Rules of Procedure, points 108-115.

body of defence and security administration, keeps defence and security issues constantly at the forefront of decision-makers' minds and ensure that the state organisation is kept functioning in that respect.

Due to unified regulation, we can also expect benefits in the medium term in terms of lower overall human resource requirements and higher levels of preparedness, thanks to central coordination, planning and organised training.

5. Summary

As the determining element of provisions on the governance of defence and security regulatory system, the Vbö. serves as a kind of framework, bringing together in a single system the governance arrangements that were previously typically defined in a fragmented manner. It can also be seen as an expression of a need to regulate the elements of the governance system in a complex way as challenges and threats emerge. In view of that, the Vbö. covers the whole spectrum of governance, from Parliament, the President of the Republic, the Government and individual ministers to other organisations involved in defence, security and defence-related tasks.

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VIII.
System of defence and security management - Chapter VII of the Vbö.

1. Introduction - background, principles

Administrative activity in support of a country's defence efforts is not new, and, indeed can be said to be as old as human culture. Some of its elements can be found in ancient sources and have evolved continuously until today's modern defence and security administration. In our country, we know of sources and references to state institutions active in the defence of the nation, their place, role and activities from the very foundation of the state. Throughout our history, various activities aimed at defending the country have been inextricably linked to public administration, perhaps without realising how closely.

Of course, as time went by and life became more complex and complicated, more and more specialised expertise was needed to perform certain functions, which led to a slow separation of functions, a kind of specialisation, and as a result, these special fields began to live an independent life. The process culminated at the beginning of the 21st century, when the extreme complexity of postmodern societies, with their interdependent subsystems, combined with high levels of organisational and technical sophistication, gave rise to a mass of sectors and specialisations, each operating independently, with their own management and governance system, their own normative, professional and ethical rules and their own organisational culture. The negative effects of this phenomenon in the field of defence have taken the form of the primacy of individual and organisational interests, a tendency to rivalry, the desire to obtain as much influence and financial support as possible, and a sectoral and professional rule-bound approach, resulting in the creation of a defence administration with shared powers, fragmented along sectoral lines, with a large number of permanent or ad hoc government coordination structures and mechanisms. For at least two

decades, the profession has been drawing attention to the undesirability of the above, while urging the need for coordination between, or rather across, sectors.

Our security environment, which has changed radically over the past decades and has become highly complex, has also triggered similar trends, and has contributed to the need for some level and depth of integration as well as the creation of a coordination structure and mechanism bringing together different disciplines. The question was only when and how that would happen. The creation of the State Secretariat for Security and Defence Policy Coordination in the Prime Minister's Office on 1 November 1998 can certainly be seen as an attempt in that direction. The new organisation was made up of managers and experts transferred from the Defence Office at the Ministry of Defence, the Ministry of the Interior and the Ministry of Finance. The personal nature of this solution and its reflection of the momentary "balance of power" is confirmed by the very short period of its operation, given that, following the death of the State Secretary in charge of the organisation, the State Secretariat was abolished and its functions reassigned to the competent ministries, thus restoring the status quo ante.[438]

The above period of approximately one year was unique in that it was an attempt to move towards a more integrated system of defence administration. It was ground-breaking in that it was established on the basis of the Prime Minister's Office, which was generally responsible for government coordination, i.e. it succeeded in creating a structure that was supra-sectoral or rather inter-sectoral. At first sight, this solution seems to be a move towards a whole-of-government approach. However, a closer look at the tasks and responsibilities of the Political State Secretary for Defence Strategy and Security Policy in the Prime Minister's Office reveals that the vast majority of these responsibilities were limited to the

[438] For more detailed information on the decisive professional work and role of State Secretary GYURICZA Béla, see JÁROSCSÁK, Miklós – KASZÁS, Mihály: 20 years in the defence administration 1990-2010.

defence sector, i.e. they did not cover the whole spectrum of complex defence.

The aforementioned shortcomings were remedied by Act XCIII of 2021 on the Coordination of Defence and Security Activities (Act XCIII of 2021), which - while maintaining an appropriate level of sectoral autonomy - explicitly seeks to extend its scope to the widest possible areas of defence, forming a kind of umbrella over individual sectors and specialisations. In a much broader spectrum than earlier, as the three pillars of the country's protection:

- the defence system and the Hungarian Defence Forces,
- the police and law enforcement agencies, and
- the national security services

are indicated.

The activities of the three pillars must be supported by the whole public administration, including all sectors, and public administrations must cooperate in the field of defence and security.[439]

With the commencement of the Vbö. - at the level of legislation - we have now really succeeded in breaking down the hitherto unbreakable sectoral walls and creating a coordination mechanism at a level that can effectively mobilise the country's resources and the whole society in the event of any type of crisis. That principle is also set out in the general explanatory memorandum to the act.

In addition to the basic concept that pervades the law, it is not uninteresting to briefly describe the new system created by the Vbö. The "predecessor" defence administration, as a technical term and as a system, has been changed to "defence and security administration" under the new legislation. The interpretative provisions include a definition of defence and security management,[440] but it does not provide any specific guidance

[439] Vbö. section 3 paragraphs (1)-(2).
[440] Article 5 section 16, point 16.

on how defence and security management is different and more than the former defence and security management, or on the reasons for the change of name. These questions are rather answered by the whole spirit and orientation of the Vbö.

If we translate the English terms *'security'* and *'safety"'* into Hungarian, we find the Hungarian term 'biztonság' for both in the dictionary, so it is necessary to clarify the difference between the two. The term *'security'* generally refers to the protection of individuals, organisations and property against external threats that are likely to cause injury or damage. The term *'safety'* embodies the feeling of being protected from factors that could cause injury or damage.[441] Therefore, this *'safety'* highlights the emotional side, while *'security'* relates to the physical aspects.

In addition to semantic interpretation, the findings in the literature of security studies on the concept of 'security' are an important guide. Subsequent to the end of the Cold War, our security environment has undergone epochal changes, resulting in a 21st century world that has become complex and interdependent. The political, security, economic and social spheres are interdependent, with any dysfunction in one affecting the others. The trend is also reflected in crises, which also bear the hallmarks of complexity, and emerge in the most diverse dimensions of social functioning, such as conflicts within or between countries, failed states, international terrorism, mass migration, as well as natural and industrial disasters.

The new system of defence and security management is adapted to the changing security environment and the related change in the concept of security, as it is moving markedly in a multidimensional direction of development, in line with a complex approach to security. It brings under its umbrella a broad spectrum of security, broadly understood, and seeks to create the necessary synergies between them. Accordingly, in the wording of the legislative text, the Act covers *"the multiple and complex challenges and threats of the 21st-century security environment, as well*

[441] *http://www.differencebetween.net/language/words-language/difference-between-safety-and-security/*

as threatening, harmful, influencing and offensive behaviour based on natural, civilisational events and human actions",[442] i.e. it formulates the issues covered by defence and security administration in the most general terms possible.

The Vbö. has raised the regulation of defence and security administration to an unprecedented level. *"The unprecedented nature is not in the cornerstone, as the relevant rules are already in cornerstone laws - typically the Defence and Disaster Management Acts - but in the fact that the complexity of the Vbö. and the challenges it addresses mean that the whole-of-government approach is now for the first time a single framework for all sectors, which will continue to serve as a benchmark."*[443]

An expansive understanding of security was an inevitable and necessary step in our time, and our security and management system had to be made compatible with the new challenges in its principles, structure and operation. However, we cannot avoid examining the other side of the coin, namely how far that broad interpretation of security can be extended, and whether and if so where hard or flexible boundaries can be drawn. There continues to be considerable debate among experts of security studies about whether the concept of security should be interpreted in a broad or narrow sense. The main argument put forward by those who oppose broadening is that broadening the concept jeopardises the intellectual unity of security, i.e. so much is crammed into it that the essential meaning of security is lost. Indeed, a broadening interpretation widens the scope of knowledge required to conduct security studies and extends the need for the state to mobilise itself in an extraordinary way to a wide range of problems.

[442] Preamble.

[443] KÁDÁR, Pál (2022/8): Analysis and possible perspectives of the basic concept of the defence-security regulatory reform system, Defence Security Regulatory and Governance Workshop Papers 2022/8, National University of Public Service, Research Workshop on Defence Security Regulatory and Governance, p. 13.

The question is also a pertinent one, because the experience of previous years has shown that there is an increasing demand for a more flexible system, providing greater room for manoeuvre and intervention by the government of the day, as the complexity of challenges and threats, as well as their increased dynamics, require rapid and effective action to protect the country and its population. Among other things, the new legislation seeks to meet that need, and *"one of the basic principles of the reform of defence and security can undoubtedly be identified in the above-mentioned provision that the executive branch should be given the broadest possible mandate to carry out defence tasks, and that the legal means to do so should not be an obstacle to guaranteeing the security of citizens"*.[444]

The new legislation therefore creates the necessary room for manoeuvre for the executive power, significantly reduces administrative obstacles and seeks to create the legal and organisational conditions for effective crisis management. At the same time, increased possibilities also impose a serious responsibility on decision-makers and interveners concerned to ensure that they only use the instruments of 'security' in justified cases and then only in strict compliance with the principles of necessity and proportionality.

2. New rules for defence and security management

The reform of defence and security is comprehensive not only in spirit and principles but also in legal techniques. The changes in the state's defence mechanism are so far-reaching that they must be implemented both vertically, at all levels of legislation, from the Fundamental Law to individual decisions, and horizontally, by extending them to all sectors and areas of expertise involved in defence. Under this heading, the broader elements of defence and security management are listed,

[444] KÁDÁR, Pál (2022/8), p. 7.

referring back to those chapters of the volume where they are discussed in detail.

2.1. Special legal regime and "grey zone" rules

The first step in reforming defence and security is to reform our special legal order, which is long overdue. As a result of the amendments to the previous Constitution and the Fundamental Law, Hungary had had six special legal regimes (in the terminology of the time: qualified period), three of which contained several twists and turns, resulting in an extremely complex and complicated system of norms. From the law enforcement side, that also made the situation even more difficult in that each qualifyed period, and sometimes the different twists and turns within them, implied a completely different situation, with fundamentally different crisis situations, which meant that almost all of them required or should have required a different, specific governmental management and crisis management system and methods and procedures. The need to simplify the qualifying periods had therefore been consistently raised from time to time among defence management experts in order to be able to impose implementing rules behind the constitutional framework, thus creating a viable operational system overall.

From the development of our previous constitutional system - as discussed in the introduction and Chapter I - we could see, in a somewhat simplified and schematized way, that whenever a new type of challenge appeared in our security environment, the legislator tried to provide an appropriate response by creating a new special legal rule, by filling in loopholes that had appeared in the meantime, which, in my opinion, can be considered a worrying solution in constitutional regulation. Given that the security environment in the world, and regarding our country in particular, is expected to continue to change dynamically in the future, and that we will therefore have to face countless new challenges, it was extremely timely to reform, and in particular simplify special legal order regulation.

That long-awaited change was brought about by the ninth amendment to the Fundamental Law, creating a new triple system of special legal order cases. The essence of these is that it has implemented a completely streamlined system according to types, where a distinction is made between military type (state of war), internal security type (state of emergency) and disaster management type (state of danger) special legal order cases, depending on the nature and orientation of the threat or challenge. All that has clarified which area/sector will be the main intervener in each case, who will be supported and who will be the supporters, as well as how the system of government command and control will be operated.

In the context of special legal order, it is also necessary to mention the exceptional measures that can be taken during such periods. One significant change compared to te previous legislation, where the Defence Council and the President of the Republic also had such powers, is that under the Vbö. it is the Government alone who is empowered to take emergency measures, and to do so in the full range of exceptional circumstances. The other fundamental difference is that while the extraordinary measures defined in the Defence Act and the Disaster Management Act were clearly limited, specific measures, the Vbö. only defines a range of subjects, within which the legislator is given complete freedom of action within the limits of the law and the rules of guarantee.[445]

[445] An example of the old, specific regulation is Act CXIII of 2011 on National Defence and the Hungarian Defence Forces and on Measures that May Be Introduced in Special Legal Regimes (former Act on the Defence of the Hungarian Defence Forces) – Article 67. paragraph (1), according to which the scope of decisions of public authorities that cannot be challenged in court, the determination of competence and jurisdiction, the procedure for designating the competent administrative body, the rule on the request, the time limit for the administration of the case and other time limits, the procedure for representation, the rule on the presentation of the case, the suspension of the procedure, the procedure for legal remedies, the rule on enforcement may be established by decree as an extraordinary measure. By contrast, Article 80(2)(d) of the Vbö. on the same subject merely states, in general terms, that the Government may exercise its power to introduce exceptional measures in the regulatory fields relating to the functioning of the State and local government. As another example, Article 49(2) to (3) of Act CXXVIII of 2011 on

The catalogue of special legal measures is discussed in more detail in Chapter XV of this volume.

The three basic special legal cases were soon supplemented by legal institutions which, although not in name, but in nature and content, bear some of the characteristics of special legal order, or which behave in a similar way in certain respects. These legal solutions, which had already been known,[446] can be called quasi-special legal orders or, more generally, crisis management or 'grey zone' regulations, indicating that they are not special legal orders nevertheless differ from the normal (non-crisis default) functioning of the state.

The first of these is the "coordinated defenceaction" as defined by the Vbö., which is the manifestation in practice of the principle of a truly whole-of-government approach. In substance, it corresponds to government crisis handling or crisis management in the general sense of the term but since the terms 'crisis' and 'crisis management' have given rise to so much controversy in the recent past, it seemed more appropriate to create a new term as a compromise. This legal instrument is dealt with in detail in Chapter XIII of this volume.

The quasi-special legal regimes, or grey-zone regulations, also include defence crisis situations defined in the Defence Act.[447] It is not new in that a similar legal instrument existed in the former Defence Act under the unfortunate name of "defence emergency." From a systemic point of view, it is interesting to note that a national defence crisis is a type of coordinated defence action institutionalised in the Vbö, i.e. a coordinated

Disaster Management and the Amendment of Certain Related Acts, before the entry into force of the Act, provided that in the event of an emergency, the public may be restricted to the streets or other public places or ordered to leave a certain area of the country for the necessary period of time (evacuation). In the same respect, Article 80(2)(a) of the Vbö. only states in general that the Government may take exceptional measures in the area of personal liberty and living conditions.

[446] See KÁDÁR, Pál – HOFFMAN, István: The challenges of special legal orders and crisis management in administrative law: the place and role of "quasi-special legal orders" in Hungarian public administration. Public Law Review, 2021/3, pp. 1-11.

[447] Section 107 of Act CXL of 2021 on Defence and the Hungarian Defence Forces

defence action assigned to sectoral tasks, if you like. A national defence crisis situation is introduced by the Government on a proposal from the Minister of National Defence and may be implemented by the Government in the framework of the measures that may be introduced in the course of the coordinated defence action in the field of the Vbö., as well as in addition to special measures of a military nature, which are specified in the National Defence Act.

In addition to the national defence crisis, the Defence Act has "smuggled back" former "unexpected attack" special legal regime in the form of a quasi-special legal regime called " prevention of unexpected attack."[448] The main features of the wording of the law are identical with the previous one and the reason for keeping it in place is to enable the Government to react immediately in the event of an unexpected attack and take measures to repel the attack with forces commensurate with and prepared for the attack, in accordance with the armed defence plan of the country.

Overall, then, our special legal order system is remarkably clear but the quasi-special legal orders aimed at the so-called grey zone complicate the situation somewhat.

This legal instrument is discussed in more detail in Chapter XIV.

2.2. System of defence and security obligations

The new legislation, as a new era, is certainly rooted in the previous legislation related to the defence of the country, and develops it further along the principles and objectives of the reform. If we look at the broad outline of the structure of the legislation, we can see clear similarities with the previous Defence Act.[449] It can also be said that the Vbö. is most strongly inspired by the old Defence Act, partly taking over the legal instruments set out in the old Defence Act, partly abstracting and

[448] Ibid. section 108.
[449] Act CXIII of 2011 on National Defence and the Hungarian Defence Forces and on Measures that May Be Introduced in Special Legal Regimes

generalising the rules applied in the sectoral framework in line with the requirements of the common threat type and the whole-of-government approach. In other words, it has retained and taken forward those areas that went beyond the framework of the defence sector, and where necessary, it has - *mutatis mutandis* - adapted and developed existing rules. On that - one could say framework or skeleton - it built the topics and rules of other defence sectors (law enforcement, disaster management) that require whole-of-government coordination. Despite the fact that a certain dominance of national defence has been maintained, it has been possible to overcome the aforementioned systemic shortcomings and create a truly cross-sectoral and interconnected approach as well as whole-of-government cooperation.

Just as the system of defence obligations formed the largest part of the old Defence Act, the new Defence Act defines - now under the name of defence and security - the obligations that natural and legal persons have in relation to the defence of the country.[450]

The system of obligations is discussed in more detail in Chapter IV of this volume.

2.3. Management of defence and security activities

The Vbö. sets out in detail the provisions on the management of defence and security activities as well as the system of defence and security management. The list of bodies and organisations under the headings is familiar, since (with the exception of the newly created central body) it is identical with the organisations defined in the previous laws on defence and disaster management. Therefore, at first glance, it could be said that the defence and security organisation itself as a system and its management structure are actually outlined here, as we saw in the old Defence Act under the heading 'management of defence' and in the Disaster Management Act under the heading 'management of disaster management.' These management systems included both central bodies

[450] Vbö. section 6.

(Parliament, President of the Republic, Government, sectoral and other ministers) as well as the regional and local defence management bodies (regional defence committee, local defence committee, mayors). This system of governance, which includes all levels (central, territorial, local), is broken down in an interesting way in the Vbö.: Chapter VII is entitled "System of defence and security administration" and under it we find the central body of defence and security administration (hereinafter referred to as the central body) as well as the territorial and local bodies of defence and security administration. If we stick strictly to the content of headings, it can therefore be said that only the central body, regional and local security committees as well as mayors make up the system of defence and security management.

The legislator has given Chapter VI the title "Management of defence and security activities", i.e. it does not deal with the management of the system or parts of the system but only with the management of activities. In this chapter, we can find the organisations at the central level, such as the National Assembly, the President of the Republic, the Government and the Minister. Up to this point, the logic of the structure can be understood from the point of view of management theory, according to which these central bodies are not part of the system of defence and security management but manage it from outside, and as we know, a managing body must always be outside the system being managed. The picture is somewhat confused because of the fact that the list of organisations mentioned in Chapter VI (i.e. under the heading of governance) continues with the so-called 'defence and security organisations' (defence, law enforcement, national security services, Parliamentary Guard),[451] and other organisations involved in defence and security tasks. In the taxonomic classification of the Act, these organisations are therefore not included in the system of defence and security administration under Chapter VII, although it is difficult to imagine that they are (if only because of the generic name used in the

[451] Vbö. 5 section 18 point 18.

legislation) outside the system of defence and security administration, or that they have a governed or executive rather than a governing function.

If we take a detailed look at the management system defined in the Vbö., we can see that the listed management bodies and organisations are mostly identical with the bodies of the former system of national defence and disaster management, which had similar functions. Thus, the Vbö. basically applies the existing organisational structure, of course taking into account the whole-of-government, umbrella nature of defence and security management. (The two completely new organisational units are the central body and the national incident management centre it operates.) In practice, it means that the powers of management and coordination beyond the individual sectors have been transferred from the two sectoral laws to the Vbö., leaving the powers of sectoral, professional management of the national defence and disaster management sectors in the narrower sense. This is also in line with one of the basic tenets of the defence and security reform, which is to maintain the professional competences of the sectors, i.e. sectoral tasks remain managed and carried out by sectoral bodies, with the Vbö. merely placing coordination between them on a common governmental platform.

In principle, therefore, the different management systems are logically and systematically well distinguishable. However, the large number of organisational overlaps and the high degree of interoperability of the task systems may cause conflicts of competence and differences of opinion in the course of practical implementation. That can be particularly the case with bodies involved in or contributing to defence and security, national defence and disaster management, as well as regional and local bodies, where the threads of governance/professional management and the system of tasks intersect on all three sides. This is why the above-mentioned taxonomic streamlining is necessary, as is the establishment of a highly effective coordination mechanism to detect potential anomalies, which can be implemented through the central body of the defence and security administration.

2.4. The central coordinating body

The essence of defence and security reform, the central coordinating body set up by the Vbö., is the organisational unit that puts the idea of a whole-government system into practice. In previous years, the work of the defence administration was greatly complicated by the delegation of various government-level and other cross-sectoral tasks to sectoral bodies. It goes without saying that this has in many respects led to a predominance of sectoral and organisational interests, which in many cases has been to the detriment of overall governmental interests, with a negative impact on efficiency. This juxtaposition of interests has often made it difficult for the sectors concerned to bridge their differences, and in many cases years of rivalry have consumed energy that could have been put to much more useful purposes.

Both the spirit and the normative text of the defence and security reform and the Vbö. confirm that such misguided tendencies have been eliminated this time. First of all, it would be a serious mistake to place operational issues, especially decisions on how to implement sectoral policies, on a whole-of-government platform, even in today's context of the era of the "strategic corporal."[452] This would be a major breach of the principle of subsidiarity, which is an important principle for effective crisis management. An adequate solution to avoid that is the umbrella or framework nature of the Vbö. and its basic principle that sectoral competences should be preserved. On the other hand, the scope of defence and security activities and of defence and security bodies now encompasses not only defence but also law enforcement and disaster management, thus allowing for a truly comprehensive approach and the possibility of whole-of-government action.

At the heart of the whole system is the central body of defence and security administration, which is the main guardian of whole-of-government coordination. Looking at the scope and responsibilities of

[452] See more in LIDDY, Lynda: The Strategic Corporal, in Australian Army Journal Vol. II. no.2; 139-148. https://smallwarsjournal.com/documents/liddy.pdf.

this central body, it is extremely ambitious but at the same time not unrealistic, given the correct understanding of the nature and depth of its tasks. Article 52 of the Vbö:

"The central body of the defence and security administration

a) coordinates the administrative tasks related to Hungary's security and defence interests and their performance,
b) coordinates the tasks of defence and security planning under this Act in order to exercise the Government's management powers,
c) if the Government so decides, operates a national incident management centre for the purpose of incident management, whose main task is the professional coordination and harmonisation of all-governmental crisis management and the provision of special legal services during preparation periods and during defence and security incidents,
d) coordinates the preparation of the whole government for coordinated protection activities,
e) prepare the requirements for the training of defence and security organisations and public administration staff for defence and security purposes,
f) coordinate the planning and delivery of tasks related to the promotion and development of national resilience,
g) coordinates the establishment and maintenance of the special conditions necessary for the Government's operation in crisis situations and special legal orders, as laid down in the Government Decree, and proposes the budgetary resources required for this purpose,
h) monitors and supports scientific research contributing to the promotion of defence and security interests and related developments, and to the identification of technological and societal challenges related to security and defence, within the scope of its mission,
i) monitors defence and security provision and preparedness in ministries, government departments and central agencies,

j) coordinates the sectoral tasks of special legal preparation, and
k) shall perform the additional tasks assigned to it by law."

Due to the framework nature of the law, the tasks are formulated in a rather general way but the main areas that will form the backbone of the central body's activities can nevertheless be clearly identified. In line with the coordination function, the most typical and most numerous tasks are those relating to the coordination of defence and administrative activities. The central body will coordinate in this respect:

- the design,
- the preparation,
- enforcement.

In the context of planning, the central body can play an important role in the preparation of documents belonging to the planning system defined in the Vbö., in particular the Integrated Defence and Security Guidelines, which is a whole-of-government document and for which the head of the central body is responsible. In addition, it is expected to give its opinion on the Principles of Security and Defence Policy, to be developed by the Minister of Foreign Affairs and Trade, and the National Security Strategy, as well as on sectoral strategies, basic plans and action plans, the latter ones to ensure coherence with central plans.

In the context of preparation, the central body, with the involvement of the sectors concerned, develops the requirements for the general education and training of the personnel performing defence and security tasks, furthermore contributes to the development of educational programmes and themes in cooperation with the Ludovika University of Public Service and other higher education institutions. In addition, it coordinates the training of defence and security forces in the field of coordinated defence action and special legislation. The latter task covers concrete, direct preparation for implementation.

In the context of enforcement, the law refers to the coordination of administrative tasks, with a somewhat vague definition of the scope of the tasks involved. It would perhaps be logical to define the coordination of tasks as belonging to the scope of defence and security incidents, as set out in Article 5 (15) of the Act but instead, the Act states that it *"coordinates the administrative tasks related to the security and defence interests of Hungary and their performance".*[453] The legislator probably avoided the reference to an exhaustive list and resorted to a much more flexible and open text in order to avoid the legislator being in a position where the necessary measures could not be taken in a given case because it was outside the limits and possibilities of a rigid list.

In addition to these general coordination tasks, the central body is also responsible for some more specific areas. The first of these is control, namely the control of ministries, main government agencies and central offices for the purposes of defence and security, and their preparation for such tasks. In particular, the audit covers the following areas of activity of the audited body:

- planning,
- organisation,
- training and education,
- preparation,
- task-execution.

The audits should examine efficiency, effectiveness and compliance with the requirements set out in the governance coordination framework. It also shows that the scope of the audits does not include the examination of legality, i.e. there is no mandate to carry out a legality audit in the classical sense but if the committee detects any potentially illegal practices or measures, it can certainly draw conclusions and make recommendations in this respect.

[453] Article 52 (a) of the Vbö.

If you think about the content of this single task, you can see the scale of the activity. To set up an audit system, the minimum requirements of the audit, its methodology, the rights and duties of the auditors and auditees, the participants and contributors, the procedural rules of the audit, the formal requirements for the content of the audit report, the means of redress, to mention only the most basic ones, must be established. All these rules are laid down in Government Decree 403/2022. (X. 24.) on inspections for defence and security purposes.

Chapter XII of this volume also deals with auditing in detail.

Perhaps the most influential function of the central body is the operation of the National Incident Management Centre, which is the second new body to be created in the system of defence and security management alongside the central body. The centre will be responsible for the professional coordination of whole-of-government crisis management and the provision of specialised law enforcement during preparedness as well as security and defence incidents. It will create the long-awaited integrated national crisis management centre, hopefully with permanent professional staff.

Another specialised task of the central body is to coordinate the planning and execution of tasks related to the promotion and development of national resilience, as discussed in Chapter VII of the present volume.

The central body is also responsible for coordinating the establishment and maintenance of the special conditions necessary for the Government to operate in crisis situations and special legal orders, as well as for proposing the budgetary resources required for this purpose. This task was previously called "ensuring the operational conditions of the Defence Council and the Government" and was the responsibility of the Minister of Defence. It is both a national and NATO requirement that government decision-making, and governance in general, should be continuous at all times and in all circumstances, and therefore the specific conditions necessary for that, both physically and organisationally, should be

provided. The nature of this task, which concerns all the ministries, has led to its transfer from the defence sector to the central body.

Finally, the central body is responsible for contributing to scientific research in the field of defence and security management. The legislation is rather cautious and the text states that the central body merely monitors and supports research within its scope of duties.[454]

2.5. Territorial and local bodies of defence and security administration

The structure and operation of the bodies of regional and local defence administration (county, metropolitan defence committees, local defence committees) were previously regulated by the Defence Act.[455] The tasks they had to perform were divided in such a way that their defence tasks were also included in the Defence Act, while disaster management tasks were regulated by the Disaster Management Act. The Vbö. has taken over the entire section on territorial and local defence administrations from the two Acts, without any major changes in the structure (only the name of county and metropolitan defence committees has been changed to territorial defence committee), and the list of tasks includes both defence and disaster management tasks.

In defining the individual tasks, the Vbö. basically follows the solution of the Disaster Management Act and distinguishes between the tasks of the preparation and implementation periods and groups respective tasks accordingly. According to the provisions of the Vbö., territorial defence committees will continue to be managed by the Government but this management would now be carried out by the central body. It should be added at the outset that this is a matter of general management authority, since the law leaves the management of sectoral defence and preparedness tasks to the sectors concerned, in accordance with the principle of defence and security reform. Accordingly, defence management is carried out by the Minister of Defence and management

[454] Article 52 (h) of the Act.
[455] Act CXIII of 2011.

of disaster by the Minister of the Interior. The Regional Defence Commission is chaired by the Metropolitan and County Comes,[456] who is the legal successor of the Metropolitan and County Government Commissioner, and its general vice-chairman is the Director-General of the Metropolitan and County Government Office. The two professional Vice-Presidents, namely the Vice-Presidents of Defence and Disaster Management, nominated by the two sectors, remain unchanged but the central body exercises the right of consent in respect of their appointment.

The composition of the Regional Defence Committee has not changed significantly; the only substantive change is the inclusion of the secretary of the committee. Accordingly, the composition of the Territorial Protection Committee is as follows:

- the president is the chief comes of the capital and the county;
- deputy general director-general of the government office of the capital and the county;
- Deputy President of the Defence is a member of the officers of the actual staff of the Hungarian Defence Forces, appointed by the Minister of Defence;
- Deputy President of the Disaster Management Department is the head of the regional body of the professional disaster management body;
- Members:
  - the chairman of the county assembly - in the capital, the Lord Mayor - or the person appointed by him or her to replace them;
  - the mayor of the city with county rights or the person appointed by him or her to replace them;
  - the head of the regional branch of military administration;
  - the competent head of a law enforcement body with autonomous powers in the area of the Committee's competence;
  - a representative of public health administration;

[456] The latin expression 'comes' (used hisorically in Hungarian) is equivalent to a 'sheriff'.

- the head of the organisation responsible for flood protection;
- Secretary of the Regional Defence Committee.[457]

The Local Defence Committee has also retained its previous composition, and its area of competence has remained unchanged, which is aligned to the districts, while in the capital to the metropolitan districts. The composition of the Local Defence Committee is as follows:

- chairman is the head of the district, metropolitan district office of the metropolitan or county government office;
- Vice President for Defence is a soldier ordered by the Hungarian Defence Forces;
- Deputy Disaster Management Chairperson is a person appointed by the head of the territorial body of the professional disaster management body;
- Members:
  - the competent head of a law enforcement body with autonomous powers in the area of the Committee's competence;
  - a representative of the government office of the capital city or county;
  - a representative of the military administration;
  - the head of the organisation responsible for flood protection in the area for which the committee is responsible;
  - secretary of the local defence committee.

The members have, therefore not changed compared to the previous regulation but it should be noted that while previously the representative of the military administration was only a member of the committee in special legal regimes, the Vbö. has removed that restriction, so that the military administration is always an important player in the body.

At the municipal level, the Vbö. has also taken over the previous regulation and the mayor remains the person responsible for the management of municipal tasks. The mayor is the only person holding a

[457] Articles 53 (1)-(3) of the Vbö.

municipal office in the system of defence and security management who, at the same time, carries out his defence-related tasks in his capacity as a public administrator. Within his or her area of responsibility, the mayor is responsible for the municipal-level tasks relating to defence and security activities laid down by law and the local defence committee, and for directing and coordinating their implementation.[458] In the list of their tasks, the Mayor's Office follows the model of regional and local defence committees, i.e. it has a separate category for preparation and implementation periods. When reviewing the list of tasks, it is striking that it consists mainly of disaster management and civil defence tasks, and that there are no tasks specifically related to national defence. The obligation for the mayor to appoint and employ a national defence adviser has also been abolished. That leads us to conclude that the legislator did not consider defence tasks to be of such importance at municipal level, and strengthened instead the mayor's responsibilities in respect of civil crisis management.

2.6. Data processing for defence and security purposes

The bodies responsible for data management for defence and security purposes under the Vbö. are:

- defence and security organisations,
- other organisations involved in the performance of defence and security tasks,
- the central body of the defence and security administration,
- territorial and local administrations of the defence and security administration,
- the mayor.[459]

The law provides detailed requirements for data processing and transfer in accordance with national and EU rules, thus ensuring that data processing is legally sound. In addition, the law provides for the creation and maintenance of a number of separate registers:

[458] Article 58 (1) of the Vbö.
[459] Vbö. section 60 (1).

- the central defence and security administration shall keep a register of notifications and alerts in the form of electronic records;
- the defence and security organisations, other organisations involved in the performance of defence and security tasks, the territorial and local administrative bodies of the defence and security administration, the mayor shall keep electronic records in the form of a register of notifications and alerts for the purpose of planning, exercising and implementing notifications and alerts;
- the Minister of the Interior keeps a repository of data on the defence economy;
- the territorial defence committee, the local defence committee, the mayor, the professional disaster management body and the territorial body of military administration keep records of technical data relating to specific property, services and technical equipment in order to fulfil their territorial, local and municipal tasks related to the economic and material service obligation.

The establishment of all those registers is a very important innovation, regardless of the fact that similar registers already existed in other bodies and other forms. These databases are the basis for a rapid and professional mobilisation of intervention bodies and economic resources. These two elements are the key to ensuring that the system, i.e. the crisis management machinery, can be activated in good time when a crisis reaches an acute phase.

Perhaps more pertinent to the functioning of the system is the issue of information flow, which the Vbö. also puts on a new footing. In order to fulfil its statutory tasks, the central body has to receive and process an extremely large amount of information from a wide range of sources. The Vbö. provides the means for that in the form that the central body may request data from any body, legal person or unincorporated organisation, which is obliged to provide these data without delay and free of charge. The request for data is, naturally, subject to a specific purpose, and the data may be demanded solely for the purposes of preventing, detecting,

identifying and averting the spread of a defence and security incident as well as organising the coordinated performance of the tasks of public authorities, and only to the extent strictly necessary to achieve those purposes.

The traditional sensitivity of crisis management systems is technical: the difficulty of providing a secure government IT system capable of transmitting classified information. The Vbö. is ambitious in its efforts to address this area, ordering that

- defence and security organisations,
- ministries,
- the central body of the defence and security administration,
- bodies with defence and security responsibilities, and
- government administrative bodies specified by Government decree

ensure the necessary conditions for the secure handling of national, NATO, EU and foreign classified data. The necessary technical conditions for an electronic transmission of these data, i.e. the classified government IT system, must also be created.[460]

2.7. Defence and security exercises

The special legal order cases and related exceptional measures provided for in the Constitution, the scope of defence and security incidents regulated in the Vbö., the coordinated defence action or the National Response System in line with the NATO Crisis Response System are all areas where the order of activities will have to be exercised in many cases in the future. Accordingly, the Vbö. provides that the public bodies involved in the performance of defence and security tasks shall regularly conduct exercises, which may be simple preparations, small-scale exercises or full-scale drills, depending on their complexity and intensity.[461]

[460] Article 69 (2) of the Vbö.
[461] Article 73 (1) of the Vbö.

As regards the scope of the exercises concerned, there will be complex national exercises involving several bodies concerned in the exercise of defence and security tasks, as well as their central and territorial bodies, and specialised exercises affecting some or several bodies involved in the exercise of defence and security tasks but only at central or territorial level. Compulsory exercises of a whole-of-government nature involving a wide range of State bodies involved in the performance of defence and security tasks shall be ordered by the Government in accordance with an annual schedule proposed by the central body of defence and security administration. The implementation of the exercise shall be evaluated by the central body of defence and security administration, which shall report annually to the Government.

The Vbö. basically provides for cross-sectoral or all-sectoral exercises or exercises involving other sectors or sectoral bodies - of a joint governmental nature - but it also provides for the possibility of individual sectors to organise and carry out their own exercises. The Vbö. does not cover military exercises at all, as they are still planned, organised and conducted separately by the Ministry of Defence and the Hungarian Defence Forces. Certainly, that is not an obstacle to the participation of soldiers, defence and military experts in defence and security management exercises of a whole-of-government nature, and their participation is even desirable, since whole-of-government cooperation is far from complete without the military side.

Basically, defence and security exercises can be classified into the following types:

- central exercise: exercises involving several bodies involved in the exercise of defence and security functions, their central and territorial bodies, or bodies involved in the exercise of certain defence and security functions or several bodies but only at central or only at territorial level;
- sectoral exercise: an exercise ordered by the heads of public bodies involved in the exercise of defence and security functions

and their managers in respect of their organisation and the bodies under their control;

- international exercise: an exercise involving several nations to prepare for the obligations of membership, for a purpose defined by the North Atlantic Treaty Organisation or the European Union;
- alert drill: a type of exercise ordered for an organisation handling or cooperating in a defence and security incident, which is a series of actions or activities for the whole, parts, elements or individual persons of the organisation, according to a set of rules, timetable and schedule;
- unscheduled exercise: a type of centralised exercise planned and ordered by the Prime Minister to assess the response and incident management capability to an actual or anticipated defence and security incident.[462]

Defence and security practices are also covered in Chapter XII of this volume.

3. The impact of the new rules of defence and security management on the system of national defence

The new Defence Act[463] (Hvt.) underwent a significant profiling process with the publication of the Vbö., and according to the principles of the defence and security reform it has now become a classic sectoral law, since one of the main objectives of the reform was to transfer the tasks requiring cross-sectoral and whole-of-government cooperation to the system of unified defence and security administration under the coordination of the central body, while the purely sectoral areas and tasks remain with the sectors. Dogmatically, that reasoning may seem

[462] Section 1 of the Government Decree 405/2022 (X. 24.) on defence and security exercises.
[463] Act CXL of 2021 on Defence and the Hungarian Defence Forces.

unproblematic at first sight but the formula is not as simple and clear-cut as one might think.

The Hvt. starts with the statement that *"Defence is a national matter"*.[464] And if a task is national, or, so to speak, all-national, then it cannot be merely sectoral. Reading the text of the Act further, it is also clear that the complex system of national defence will continue to rely on the resources of the national economy, the Hungarian Defence Forces, law enforcement agencies, national security services and other agencies, the patriotic commitment and sacrifice of its citizens in defence of the homeland, and the cooperation and assistance of allied states and their armed forces in maintaining and developing the country's defence and allied military capabilities.[465] The system of defence has therefore lost none of its complexity, and continues to encompass a multitude of bodies and organisations from other sectors. There is also an undeniable national responsibility, since the law states that *"all natural persons residing in Hungary and legal entities established under the law shall participate in the preparation for and the execution of defence tasks within the framework defined by this law by providing services, and citizens shall also participate by performing personal service."*[466]

In view of the above, it can be perhaps seen how difficult it is to draw the line between whole-of-government and sectoral. However, the Vbö. and the new Defence Act provide considerable help in finding the right line. Traditionally, former Defence Acts were divided into three main parts, according to the following thematic structure:

- national defence (the complex system of national defence),
- the management, leadership and operation of the Hungarian Defence Forces,
- special legal orders, exceptional measures.

[464] Hvt. section 1 (1).
[465] Hvt. section 1 (2).
[466] Hvt. section 1 (3).

The second of these is less problematic, since the management and direction of the Hungarian Defence Forces is a purely sectoral task, and there is no doubt about that, so the relevant regulation has been fully retained in the present Hvt. However, the picture is somewhat more nuanced in relation to special legal regime. The reform of defence and security has made it clear that special legal order must involve almost the whole country but in any case several sectors at the same time, so that the relevant legislation has been brought fully under the common umbrella of the Vbö. The other side of the coin, however, shows that the three special legal orders are closely linked to a particular sector or specialisation (state of war: defence; state of emergency: law and order; emergency/state of danger: disaster management) and will therefore have a very strong sectoral dimension. The desirable end state will be to find the right balance or relationship between the whole of government and the sectoral sides, which will require very careful consideration in terms of leadership, management and coordination. From that point of view, among others, complex exercises are of great importance, and it is necessary to model these situations so that any differences of opinion or borderline conflicts can be clarified and do not arise during the period of live implementation.

Of the three subjects covered by the Defence Acts, the first is the defence of the country (the complex system of defence), which perhaps makes it the most difficult to distinguish between the whole government and the sectoral. The Minister of Defence is responsible for the defence of the whole country, which, as we have seen, is a complex system of tasks with many actors and complex roles, and the Minister of Defence has the right to manage the system as a whole.[467]

According to earlier practice, the Government Decree implementing the Defence Act[468] is also a separate "Statute" Decree of the Ministry of Defence, so the detailed tasks of the Minister of Defence have

[467] Article 8 (1) of the Defence Act.
[468] Government Decree 614/2022 (XII. 29.) on the implementation of certain provisions of the Act on Defence and the Hungarian Defence Forces

traditionally been regulated in this Decree. The tasks of the Minister of National Defence in the field of defence administration and general administration are set out in the Hvt. Vhr.:[469]

a) *"directs the preparation and continuous updating of Hungary's armed defence plan,*
b) *authorises the use of the Hvt. (2) of Article 60 (2) of the Act, or for a period exceeding the number or duration of the 59 of the Act for the performance of the tasks of an intermediary,*
c) *manages the intelligence system operated by the Defence Forces and the Military National Security Service and the related government information,*
d) *manages preparations for a defence crisis and the implementation of the tasks to be performed by defence organisations in a defence crisis,*
e) *manages the military and military national security cyberspace operational preparation and the execution of cyberspace operational tasks,*
f) *manages the tasks related to the protection of critical defence systems and installations and prepares the relevant regulations,*
g) *manages the tasks related to the hosting of national aid,*
h) *manages the tasks related to national resilience and defence against hybrid threats and civil preparedness,*
i) *manages the national defence tasks of civil protection training during armed conflicts,*
j) *guides the preparation of the National Military Strategy."*

Overall, the new Defence Act aims to reform the institutional system of defence as a whole in line with the reform of the defence and security institutional system. By bringing some of the tasks and responsibilities under the umbrella of defence and security administration, the professional nature of the regulation will be somewhat clarified and

[469] Hvt. Vhr. section 2 (2).

strengthened. There is no doubt that the military character will be strengthened but at the same time we should not forget for a moment the important principle consistently expressed by those working in the defence administration: defence is not equal to military defence and the Hungarian Defence Forces, and defence must be seen as a complex system covering the whole nation, even after the reform of defence and security.

4. The impact of the new system of rules for defence and security management on the disaster management system

The first dilemma we can formulate with regard to the system of disaster management is the same as the one that has arisen with regard to national defence. According to the Disaster Management Act,[470] disaster management is also a national matter,[471] and is a complex system involving a very wide range of actors. According to the Disaster Management Act, disaster protection is carried out by coordinating the activities of the bodies set up for that purpose and the various protection systems, citizens, civil defence organisations, business organisations, the Hungarian Defence Forces, law enforcement agencies, the National Tax and Customs Administration, the State Meteorological Service, the state rescue service, water management authorities, the state health administration, volunteer NGOs as well as public bodies set up for that purpose, and, in the event of a non-natural disaster, the party causing and bringing about a disaster, state authorities and local authorities.[472] The same difficulties, therefore, arise in delimiting the whole-of-government and sectoral spheres as in the case of the defence system.

However, if we look at the status of the minister in charge of the field, the Minister of the Interior, who is responsible for disaster management, we can see an interesting difference compared to the Minister of Defence.

[470] Act CXXVIII of 2011.
[471] Kat. section 1 (1).
[472] Kat. section 2 (1).

While the Defence Act clearly states that the Minister of Defence is responsible for the defence of the country and exercises management powers in that area, the Disaster Management Act does not do the same for the Minister of the Interior. Although Government Decree No. 182/2022 (24. V.) on the Duties and Powers of the Members of the Government, the Ministry of Defence fills this gap and states that the Minister of the Interior is the member of the Government responsible for disaster prevention and protection,[473] and that he or she is responsible for the government and coordination of domestic and international civil crisis management,[474] it is noteworthy that this declaration is only implemented at the level of decree regulation and is not as universal as it was in the case of the Minister of Defence.

A comparison of the versions of the Disaster Management Act immediately before and after the entry into force of the Act shows that tasks have remained largely unchanged. Only one task relating to emergency situations has been deleted and two new tasks have been added to the Government's disaster management tasks.

If we look at the catalogue of the Minister of the Interior's disaster management tasks, we find the same, i.e. they have not changed substantially since the commencement of the Vbö. The tasks are identical in the two versions of the Disaster Management Act, with one exception. The following task has been added to the list: *"The Minister of the Interior shall ensure the implementation of the tasks laid down in the Act on the Coordination of Defence and Security Activities with regard to the organisations under his/her control and shall ensure effective cooperation between the organisations under his/her control with regard to the bodies and organisations involved in the performance of defence and security tasks, in particular the bodies of the Defence and Security*

[473] The term civilian crisis management is problematic in that it is nowhere defined what civilian crisis management means and what powers are actually meant by it.
[474] Government Decree No 182/2022 (24 May) on the Duties and Powers of the Members of the Government, Section 72 (2) a).

Administration."[475] It can therefore be seen that the Act has created a link with the Vbö. through this provision but because of its extremely general and restrictive nature, it would be difficult to say that this is sufficient to ensure full consistency between the two Acts, which is achieved by the detailed rules of competence in the implementing regulations.

5. Summary

In the present study, we examined the legal level of the system of rules of defence and security administration, including the Fundamental Law, the Defence Act and the Disaster Management Act, which are of decisive importance for the functioning of the system but certainly not to be exhaustive. We have not covered in depth the provisions relating to individual fields of expertise, or obviously internal sectoral professional rules, such as those relating to the professional organisation of the Hungarian Defence Forces or disaster management services. We have also refrained from going into detail in topics that have been dealt with in other chapters of the volume, such as national resilience, defence and security planning system, or the National Response System in line with NATO's Crisis Response System. Our analysis has focused on the legal provisions that generally define the structure and functioning of the system as a whole, highlighting the areas most affected by the changes.

Overall, the reform of defence and security has brought about a transformation of defence administration on a scale and in a depth not seen since the change of regime. The principles that have been put forward by theoreticians and practicing professionals for many years, and described in the literature in numerous sources, that our defence management system, which is highly fragmented along sectoral and professional lines, will not be able to meet the challenges of the future, now seem to have been heard and there is a realistic chance that these ideas can be turned into reality. The importance of cross-sectoral

[475] Kat. section 8.

cooperation and a comprehensive approach was first flagged up by the MoD Defence Office in 2010 and a process has slowly started, whereby this new way of thinking has gradually started to infiltrate organisational consciousness, although practical progress has been very limited. It took more than a decade for a real breakthrough to be achieved before the reform of defence and security created the framework conditions for a previously envisaged comprehensive approach and then for whole-of-government and even whole-of-nation cooperation to work in practice. We are convinced that this could not have been otherwise, since it was foreseeable that, whatever the weight of sectoral or professional partial interests, the changing security environment would sooner or later force this systemic reform.

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Act CXXIII of 2011 on National Defence and the Hungarian Defence Forces, as well as on Measures Applicable in a State of Emergency

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

Act XCIII of 2021 on the Coordination of Defence and Security Activities

Act CXL of 2021 on National Defence and the Hungarian Defence Forces

Government Decree 614/2022 (XII. 29.) on the implementation of certain provisions of the Act on Defence and the Hungarian Defence Forces

Government Decree No. 182/2022 (24. V.) on the Duties and Powers of the Members of the Government

405/2022. (X. 24.) Government Decree on defence and security exercises

IX.
Determination of non-compliance with defence and security obligations (defence and security fines) - Chapter VIII of the Vbö.

1. Introduction

The Act XCIII of 2021 on the Coordination of Defence and Security Activities (Vbö.) created the possibility of sanctions for the breach of defence and security obligations and established the framework for defence and security fines in case of the failure to comply with certain obligations set out in this Act.[476] The fine is specifically related to activities in the field of defence and security administration but in a broader sense it is a sanction applicable to administrative offences, and therefore the provisions of the Vbö. should be applied in conjunction with the relevant provisions of the General Administrative Code and the legislation on sanctions for administrative offences. Accordingly, in addition to the Vbö., the rules on defence and security fines are essentially contained in the following legislation:

- Act CL of 2016 on General Administrative Procedures
- Act CXXV of 2017 on Sanctions for Administrative Violations
- Government Decree No 406/2022 (X. 24.) on the rules of defence and security fines.

Together, these laws set out the substantive and procedural rules on defence and security fines as follows.

2. Substantive and procedural rules relating to breaches of defence and security obligations

The imposition of a safety and security fine is conditional on the establishment of a breach of safety and security obligations, for which the competent authority will carry out an administrative procedure. The

[476] Article 70 of the Vbö.

procedure shall be initiated ex officio on the initiative of the persons or bodies empowered by the Vbö. to do so. Accordingly, it may initiate the procedure to establish a breach of defence and security obligations:

- the central body of the defence and security administration,
- Chairman and Vice-Chairman of Regional Defence Committee,
- chairman of local defence committee,
- the mayor,
- head of the sectoral administrations performing defence and security management functions under the Vbö.

Proceedings may be brought against a natural person, legal person or legal entity without legal personality who fails to comply or fails to comply properly with the protection and security obligations specified in points (a) to (c) of paragraph (1) of Article 70 of the Vbö., or in specific cases expressly violates the rules introduced in the context of coordinated defence action. These provisions of the Act provide for the initiation of proceedings and the imposition of fines for four specific types of breach of obligation, which are set out in detail in Annex 1 to Government Decree No 406/2022 (X. 24.) on the rules of defence and security fines, as follows:

a) civil defence obligations
   - failure to comply with the obligation to provide civil defence data,
   - providing false information in relation to civil defence data,
   - failure to comply with the obligation to notify civil defence,
   - failure to comply with the obligation to attend civil defence,
   - failure to perform civil defence duties,

b) economic material service obligations
   - failure to provide compulsory information on economic and material services,
   - providing false information in relation to economic and material services,

- failure to comply with the obligation to provide economic and material services,

c) obligations related to the preparation of national economy for defence and security purposes

- failure to provide data ordered for the purposes of planning the national economy for defence and security purposes,
- providing false information for the purposes of national economic defence and security planning,
- breach of the obligation to maintain reserves for the defence and security of national economy,
- initiating the promulgation of a special legal order and, in the case of a special legal order, preventing the mobilisation of economy,

d) rules introduced in the context of coordinated defence action

- in the case of a coordinated defence action, preventing the temporary requisition of movable and immovable property,
- breaches of the rules of conduct introduced in the event of a coordinated defence action.[477]

The administrative authority procedure is carried out by the metropolitan or the county government office on the initiative of the above-mentioned bodies. In relation to the initiation of proceedings, the relevant legislation provides for two limitation periods, according to which proceedings may not be initiated if six months have elapsed from the date on which the authority became aware of the infringing conduct (subjective limitation period),[478] or one year after the infringement occurred (objective limitation period).[479]

If a breach of duty is established in the course of the procedure, the competent metropolitan or county government office may impose a

[477] Article 70 (1) of the Vbö.
Government Decree No 406/2022 (X. 24.) on the rules on defence and security fines, Annex 1.
[478] Act CXXV of 2017 on the Sanctions for Administrative Violations section 5 (1).
[479] Article 70 (2) paragraph (2) of the Vbö.

defence and security fine at the rate specified in Government Decree 406/2022 (X. 24.) on the rules of defence and security fines. The minimum and maximum amounts of fines, broken down for each type of misconduct, are set out in Annex 1 to the Government Regulation. The minimum fine is HUF 50 000 and the maximum fine is HUF 5 000 000. In the case of several different infringements, the amount of the fine is the sum of the individual fines, up to a maximum of HUF 5 000 000.[480]

Within the limits set by the Government Decree, the competent authority has a discretionary power, taking into account all the relevant circumstances of the case, in particular the following when deciding on the amount of a fine:

- the harm caused by the infringement, including the costs incurred in preventing, remedying or repairing the harm, and the extent of the benefit obtained from the infringement,
- reversibility of the harm caused by the infringement,
- the size of the group of persons affected by the infringement,
- the duration of the infringement,
- the repetition and frequency of the infringing conduct,
- the cooperative behaviour of the offender in assisting the proceedings,
- the economic gravity of the infringement,[481]
- the financial situation and income of the offender,
- the appropriateness of the fine to deter the offender from committing a further infringement.[482]

The competent metropolitan or county government office may reduce the amount of the defence and security fine or reduce it indefinitely and may authorise payment in instalments.[483] If no decision imposing an administrative fine had been registered in respect of the client within three

[480] Amounts corresponding to the state of the law as of 29 June 2023.
[481] Act CXXV of 2017 on Sanctions for Administrative Violations, Section 10 (1).
[482] Government Decree No 406/2022 (X. 24.) on the rules of defence and security fines, section 2.
[483] Article 70 (4) of the Act.

years prior to the date of initiation of the administrative procedure, i.e. if the client was not convicted of a similar offence in the last three years, the administrative fine may not exceed half of the maximum amount of the fine.[484]

The proceeding authority shall make a decision on the substance of the case in the form of a decision which shall contain:

- all the data necessary to identify the proceeding authority, the clients and the case (except for confidential and protected data),
- in the operative part, the decision of the authority, the opinion of the competent authority, the information concerning the remedy and the costs incurred,
- the facts established,
- the evidence,
- the justification for the opinion of the competent authority,
- the reasons for the consideration and decision,
- an indication of the legal basis for the decision,[485]
- the number of the payment account to which the payment is to be made.[486]

The authority must also make provisions in its decision regarding the costs of the procedure and the costs to be borne by the authority. The general rule in administrative proceedings is that the costs of proceedings are to be borne by the person who incurred them. The party to the proceedings bears the costs caused by their unlawful conduct, while the costs of proceedings which no one is liable to bear are borne by the proceeding authority.[487]

The administrative procedure for breaches of safety and security obligations is a one-step procedure, i.e. there is no possibility of appeal. Accordingly, the decision becomes final and enforceable upon

[484] Act CXXV of 2017 on Sanctions for Administrative Violations, Section 10 (4).
[485] Act CL of 2016. on General Administrative Procedures, section 81 (1).
[486] Government Decree No 406/2022 (X. 24.) on the rules of defence and security fines, section 3.
[487] Act CL of 2016 on the General Administrative Procedure, section 125.

notification. There is, certainly, also a right of appeal, as the final decision can be challenged by the client concerned before the competent court. [488]

The payment of a fine imposed by a final judgment may, in certain cases, impose a disproportionate burden on the client, their relatives or the economic activity they perform. Therefore, the law gives the authority a right of discretion to apply certain equitable releases and reliefs, of which it basically distinguishes two types:

- authorisation to pay by instalments,
- lowering or reduction of the fine.

The authority may allow payment by instalments on application by the client before the deadline for payment, up to a maximum of 12 monthly instalments. It is subject to the condition that the party liable to pay the fine proves to the satisfaction of the Commission that compliance would impose a disproportionate burden on him or her. The authorised instalments must be paid on a monthly basis and right on time, since should an instalment be not paid on time, the full amount becomes due immediately, i.e. the obligee immediately loses the benefit of the instalment facility.[489]

Fines can be lowered or reduced for natural persons, legal persons and other economic operators. On the basis of an application by a natural person before the deadline for payment, the authority may issue an order for reduction or unlimited reduction of the fine if payment of the fine would seriously jeopardise the livelihood of the obligee and his/her dependants. Where an obligee is a natural person, a legal person or any other body engaged in economic activity, the reduction or unlimited reduction of the fine may be granted only on the grounds of exceptional

[488] Act CL of 2016 on General Administrative Procedure, section 114 (1).
[489] Government Decree No 406/2022 (X. 24.) on the rules of defence and security fines, section 4 (1).

fairness, in particular where payment of the fine would make the economic activity of the debtor impossible.[490]

3. Summary

The Vbö. has created a system of sanctions for defence and security regulations, similar to the solutions already known from other legislation, which serves to ensure that citizens and actors who play a decisive role in defence can be pressed to fulfil their obligations in cases that do not reach the level of protection provided by the criminal sanctions system. These cases typically involve financial sanctions, which can be applied to natural persons as well as legal persons and other entities.

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[490] Government Decree No 406/2022 (X. 24.) on the rules of defence and security fines, section 4 (2)-(3).

X.
System of alert for defence and security purposes - Chapter IX of the Vbö.

1. Purpose and framework of the alert system

The active involvement of the widest possible range of governmental and non-governmental bodies, and beyond that the population and society as a whole, in defence and security activities, is a cornerstone of the systemic rationale, objectives, structure and operational background of defence and security management. A system of defence and security management based on the above principles involves a very wide range of involved entities and actors. For the system to function effectively, it is essential that the bodies and organisations involved in defence and security tasks and all the actors concerned are alerted and informed in a rapid and organised manner so that the forces and equipment needed for defence are in place at the right time and the public receives the information and instructions it needs.

For that purpose, Act XCIII of 2021 on the Coordination of Defence and Security Activities (Act XCIII of 2021) established the Alert System for Defence and Security Purposes (hereinafter: Alert System) and ordered its continuous operation.[491] The alert system is divided into two subsystems in accordance with its dual purpose:

- alerting and notifying public authorities,
- alerting and notifying the public.[492]

It does not create a new, stand-alone alert system but basically integrates existing alert and notification systems into a common logical and organisational framework. In line with this, the operation of the system of alerting for defence and security purposes as a framework is

[491] Article 71 (1) of the Vbö.
[492] Article 71 (3) paragraph (3).

coordinated by the Defence Management Office as the central body of defence and security administration.[493]

2. The role of defence and security notification in the alert system

The information on which the alert is based may originate or come from competent public authorities, or from outside non-governmental organisations, or the public. In order to strengthen the flow of information from outside, the Vbö. introduced the legal instrument of mandatory notification for defence and security purposes. Under that, in normal law and order, everyone is obliged by default to report without delay if they observe or become aware of any of the following:

- the occurrence or imminent threat of serious and violent disruption of public order or public security,
- the occurrence or imminent threat of a disaster. [494]

In periods other than normal, namely during the existence of a coordinated defence action, following the initiation of a state of war or a state of emergency, and during a special legal order, the obligation to notify covers the following events and their imminent threat:

- acts that seriously harm or endanger the national defence interests of the country,
- acts that seriously violate the order of the state border,
- failure of or damage to a critical system that poses a significant threat to the safety of life and property.[495]

The notification must be addressed to the emergency service, the police, the defence organisation, the professional disaster prevention service, the regional government administration, the municipal fire brigade, the mayor's office or the joint municipal administration. The body receiving the notification shall, as soon as it becomes aware of the incident, notify

[493] Article 71 (2) paragraph (2) of the Vbö.
[494] Vbö. section 19 paragraph (1).
[495] Vbö. section 19 paragraph (2).

the body with competence and jurisdiction in relation to the incident of which it becomes aware and, in the case of an incident of national importance, the body responsible for operating the government surveillance system.[496]

This obligation system also acts as an input to the defence and security alert system.

3. Alerting public authorities

In addition to the above, the alerting and notification of state bodies within the alerting system for defence and security purposes rely fundamentally on the Government Surveillance System,[497] which was established by Government Resolution 1324/2011 (IX. 22.) (hereinafter: Government Resolution) for the purpose of collecting, evaluating and transmitting information on, and reports on, incidents requiring government action.[498] The central tasks of operating government surveillance are carried out by the Ministry of the Interior, including the Ministry of the Interior's Inspectorate Department, under the subordination of the Counter-Terrorism Centre's Directorate for On-Call

[496] Articles 19 (3)-(4) of the Vbö.
[497] Exceptional occurrence requiring governmental action as defined in Annex 1, No 20 of the Government Decision, point 1: "any unforeseen danger or event which, in its potential or actual impact on Hungary, is capable of causing damage to life, soundness, health, property, financial and economic supply systems, public administration infrastructure, the natural or built environment on such a scale, and to a serious disturbance of public peace and the functioning of society which, because of its magnitude, requires or may require government action, whether or not the conditions for the promulgation of a special legal order under the Constitution are met on the basis of the specific situation or whether it is caused by a cause arising within or outside the country's borders."
[498] 1324/2011 (IX. 22.) Government Decision on the establishment of the Government Inspection System, point 1.

and Object Protection, under the name of the Ministry of the Interior's Inspectorate.[499]

In order to ensure the functioning of the sectoral segments[500] of the Government Inspectorate, each Minister is required to designate security offices within the bodies under his/her leadership, direction and supervision (i.e. within the sectoral bodies) that are responsible for reporting. They must define the sectoral reporting arrangements and the list of incidents requiring government action.[501] Ministers and their deputy political or professional heads must ensure that their contact details are collected and kept up to date through the government monitoring system.[502]

The order of information flow within the government monitoring system is defined in Annex 1 of the Government Decision as follows:[503]

a) The Sectoral Security Office shall immediately notify the Government Inspectorate of any incidents and information arising in connection with them by means of a prompt report of facts;

b) The Government Inspectorate immediately informs the Secretary of State for Public Administration in the Prime Minister's Office, the Minister responsible for law enforcement, the Minister responsible for defence and the Minister responsible for coordinating the performance of government tasks in the field of defence and security, on the basis of the report of the security inspectorate.

c) If necessary, the Minister of State for Public Administration of the Prime Minister's Office or the Minister responsible for law

[499] 33/2011 (XII. 2.) BM Order on the order of the duty of information to be fulfilled by the on-call services of the Ministry of the Interior and the bodies under the control of the Minister of the Interior, and on the functioning of the Government Inspectorate, point 2.
[500] The sectoral tasks of the Government Inspectorate are laid down by the sectoral ministers in the form of instructions.
[501] Government Decision, point 5.
[502] Government Decision point 5a
[503] Government Decision Annex 1, points 2-4.

enforcement shall inform the Prime Minister of any extraordinary events, measures and proposals.[504]

The reporting obligation of the metropolitan and county government offices to the Prime Minister's Office is a separate alert and notification subsystem related to the Government Inspectorate. From a defence and security point of view, this is of particular importance as the capital and county government offices are the base of territorial defence committees, the bodies responsible for the coordination of defence and security tasks at the territorial level.

Order No. 11/2015 (VI. 2.) of the Minister of the Prime Minister's Office on the order of reporting obligations to be fulfilled in the government surveillance system by bodies under the leadership, direction and supervision of the Minister of the Prime Minister's Office and on the list of extraordinary events requiring government action obliges government agencies to operate a local emergency service in order to fulfil their reporting obligations in connection with extraordinary events occurring on their territory. The local offices shall immediately inform the Security Office of the Department of Organizational Security of the Prime Minister's Office by telephone as soon as they become aware of reportable incidents. The Security Office shall report immediately to the state official on duty within the Prime Minister's Office on incidents and information arising in connection with them.[505] The state official on duty shall then decide on the information to be provided to the Government Inspectorate, which shall be implemented by the Security Office in accordance with the decision.[506]

[504] The need to report to the Prime Minister is decided jointly by the Minister of State for Public Administration in the Prime Minister's Office and the Minister responsible for law enforcement.
[505] In the Prime Minister's Office, the duties of the state official on duty are, as a rule, carried out by the Minister, who is replaced by the State Secretary for Public Administration if he is prevented from doing so.
[506] 11/2015 (VI. 2.) MvM Order on the order of reporting obligations to be fulfilled in the government monitoring system by bodies under the leadership, direction and

The notification and alerting system related to the operation of NATO Crisis Response System and the National Response System can also be seen as a separate subsystem, partly linked to the Governmental Inspectorate. Its purpose is to ensure that the relevant decision-preparing, decision-making and implementing bodies are notified and alerted in a timely manner in the introduction and implementation of national crisis response measures. The focus of the subsystem is on two bodies: the Defence Administration Office, as the central body for defence and security management, the National Response System as the body responsible for national coordination, and the unit designated by the Minister of Defence within the Ministry of Defence as the operational body coordinating national crisis management (hereinafter referred to as the operational body).[507]

As a rule, NATO's initiative for crisis response action at member state level is received by the operational body, which has an IT system suitable to receive it. If the initiative is not received by the operating entity, the recipient of the initiative immediately informs the coordinating entity, which notifies the operational body and the sectoral lead entity responsible for the introduction of the measure in question.[508]

Alarming the bodies involved in the preparation, decision-making and implementation of decisions and, more generally, bodies involved in the operation of the National Response System, is carried out by the operational body through the government agency, the on-call service or the courier service designated by the sectoral body responsible.[509]

The operational body shall inform the competent NATO body and the coordinating body of the introduction or withdrawal by Hungary of a

supervision of the Minister leading the Prime Minister's Office, and on the list of extraordinary events requiring government action, section 2 (2)-(9) paragraph 2.
[507] Government Decree 399/2022 (X. 21.) on the rules related to decision-making and tasking in connection with the NATO Crisis Response System and the application of the National Intervention System (hereinafter: NIR Decree), section 2, points 7-8
[508] NIR Regulation section 16 (1).
[509] NIR Regulation section 17.

national measure in accordance with a crisis response action initiated by NATO.[510]

4. Alarming the population

Under the legislation in force, the public may be alerted for defence and security purposes, civil defence, counter-terrorism, as well as disaster prevention purposes. In the first three cases, alarming is carried out through the National Air Alert System (NAAS), while alerting for disaster prevention purposes is carried out through a separate system based on the provisions of the Disaster Managemnt Act and its implementing regulation.

The National Air Alert System is a multifunctional system capable of alerting the whole country,[511] carriying out the alert through an electronic communications service provider[512] and media service provider[513] designated by law through immediately interrupting the current programme and reading the text of the alert on the designated media service provider's channels, on the instructions of the competent decision-maker.

The Minister of Defence is responsible for coordinating tasks related to the operation of the National Air Alert System, and this task is performed through the Ministry of Defence's department responsible for defence administration. The Minister of the Interior also plays a key role in the operation of the system, directing the implementation of civil defence tasks related to air alerting, including ensuring the transmission of air

[510] NIR Regulation section 16 (3).
[511] The rules governing the purpose and operation of the National Air Alarm System are contained in Chapter IX of Government Decree 614/2022. (XII. 29.) on the implementation of certain provisions of the Act on Defence and the Hungarian Defence Forces.
[512] The designated electronic communications service provider is the National Media and Infocommunications Authority (NMHH).
[513] The designated media service provider is the Media Services Support and Asset Management Fund (MTVA)

alerting signals to professional disaster management bodies via the National Directorate General for Disaster Management of the Ministry of the Interior. The technical conditions for operation are provided by the National Media and Infocommunications Authority, while the Media Services Support and Asset Management Fund (MTVA) broadcasts the air alert or its cancellation by interrupting transmission and publishes air alert-related announcements.[514]

The following persons may order the use of the air alert system:

- in the event of an air attack or imminent threat of an air attack, the air force commander on duty,
- in the case of employment for disaster management purposes, the person appointed by the Director General of the National Directorate General for Disaster Management,
- in the event of a significant and imminent threat of a terrorist attack, the Director General of the Counter-Terrorism Centre or his or her designee.[515]

The National Air Alert System can therefore be used for disaster alerts but the country also has a separate disaster alert system[516] for alerting and informing the public in case of emergency. Alerting for that purpose can be done:

- by publishing a public notice on mass media (television, radio),
- by means of the public alarm system (siren),
- by using electronic communications services (e.g. SMS),
- in the usual local way (loudspeaker, messenger, wall stickers),
- other locally available equipment (e.g. hands-free equipment),

[514] Hvt. vhr. section 27 c), section 28 a)-b), section 30, section 33 c) and e).
[515] Hvt. vhr. section 34, section 37 (2), section 38 (2).
[516] The rules on the alerting for disaster management purposes are set out in Articles 34-44 of Government Decree No. 234/2011 (XI. 10.) on the implementation of Act CXXVIII of 2011 on Disaster Management and the Amendment of Certain Related Acts (hereinafter: Kat. vhr.).

- using the above methods simultaneously, if necessary and possible.[517]

The circle of persons responsible for ordering a disaster alert is adapted to the territory or administrative unit concerned. Accordingly, the person responsible for the disaster alert is:

- in the case of a national or multi-county threat, the Minister of the Interior,
- in the case of a county or metropolitan-level threat, the chairman of the regional defence committee,
- the mayor in the event of a threat to the municipality,
- in the territory of an enterprise, the head of the enterprise.[518]

The alert is made through the professional disaster management services or by informing them.

5. Summary

By regulating the system of alerting for defence and security purposes, the Vbö. provides a legal framework for alerting citizens and public authorities to defence and security incidents. The system is supported by the legal institution of the obligation to notify for defence and security purposes, which, although it is an obligation without sanctions, nevertheless orients the behaviour of citizens through its rules and strengthens the involvement of society as a whole in the provision of defence and security tasks.

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XI.
Inspections and exercises for defence and security purposes - Chapter X of the Vbö.

1. The importance of inspections and exercises in regulation

Chapter X of Act XCIII of 2021 on the Coordination of Defence and Security Activities (Vbö.) summarises the subject matter indicated in the title in two titles and two sections, which concern two partially interrelated sets of rules of a primarily functional nature.

Chapter X is in the second part of the Vbö., entitled Management and coordination of defence and security activities and the specific administrative arrangements for the tasks relating thereto, following the principles but preceding the sections on crisis management and special legal regimes. This subject is discussed relatively late within the Act and it has a narrow scope compared to the 85 sections which indicates an instrumental role of the two subjects in relation to the defence and security subsystem: their primary importance is to provide information and feedback on the regulatory and operational status. Ultimately, however, the Chapter X promotes the validation of data on the institutional system through the simulation of real-life situations, the effectiveness of the system and thus reaction capabilities of the state. This is precisely what makes the chapter so important: in the 21st century, when we are living in a world of unprecedented and cumulative threats, rules are not supposed to be a mere framework, but their implementation is essential, especially in the field of defence and security. This is what the legislator is doing, when, after regulating requirements and operations, it makes it legally binding to monitor, inspect and exercise their implementation. This was not the case in previous legislation and is therefore an innovation of the Vbö.

At the same time, the length of the two government decrees, which exceed 40 sections for a total of eleven paragraphs, also indicates that the

dominant level of regulation is the decree level, beyond the elements highlighted in the act. By way of introduction, it should also be pointed out that the original Article 83 of the Vbö, which contained the authorizing provisions, differed from the wording in force at the time of its coming into force:[519] paragraphs 13 and 14 of the original 18-element authorizing provision expressly referred to *"the rules of procedure for inspections"* and *"the rules for the planning, organisation and implementation of exercises"*, compared with the effective provision in the current version of Article 83, which indirectly refers to the scope of inspections and exercises as part of the general concepts.[520] However, in view of the minimal correction to the content of the text,[521] this can be seen more as a technical solution of codification than as a reassessment of the significance of the two regulatory subjects.

The principle of purpose limitation can be fixed as a common regulatory starting point for the two subject areas: they are ultimately instruments to promote defence and security interests. The latter is defined in Article 5 point 14. as *"the totality of interests related to the protection and defence of Hungary's sovereignty, independence, territorial integrity, state, social and economic stability and functioning, as well as the general enforcement of the rights of Hungarian citizens and the population of the country, and the restoration of these interests in the event of damage or injury to them"*. That concept refers to a complex subject matter to be protected, which may be assessed both at the level of integrity and continuity of the functioning of the State and as a set of State activities aimed at protecting the rights of the population. Inspection and exercises

[519] *https://www.parlament.hu/irom41/16221/16221-0007.pdf* 56.

[520] Article 83 The Government is empowered to determine by decree
5. the detailed rules concerning the central body of the security and safety administration, the bodies and persons performing security and safety management tasks, the tasks and operational arrangements of the national incident management centre, the professional management and training of the security and safety administration, and security and safety planning and control,"

[521] The only change to date to Articles 72-73 of the Vbö. has been the deletion of the text specifying the investigative powers of the Prime Minister's Office, which was integrated due to restructuring the government.

provide specific tools for these macro-level objectives, which can also be assessed in relation to each other: the primary hypothesis could be that exercises focused on the shortcomings identified during inspections can contribute, as feedback, to raising macro-level effectiveness of the subsystem and the practical segment of the institutional model of defence and security.

2. Focal points of the rules about inspections

The chapter on inspection focuses further on obligations related to defence and security. The primary domain of interpretation of these obligations would be at the individual level, based on the definition[522] in Article 5 point 17, which is identified in Chapter III of the Vbö. in respect of obliged people and time limitations. These are partly obligations based on the Vbö. and partly primarily on the Hvt., which are purpose-bound obligations to expand defence and security resources in a manner commensurate with the challenges, as determined by Article XXXI of the Fundamental Law. The wording of Chapter X, however, links the obligations to the implementation of tasks arising from the defence and security context and thus separates them from the scope of interpretation of the limitations of fundamental rights.

Paragraph (1) of Article 72 of the Vbö. assigns to the central body of defence and security administration, the Defence Administration Office,[523] the responsibility for monitoring the obligations of ministries,

[522] "Defence and security obligations" mean obligations which the State may impose on natural persons, legal persons and entities without legal personality, in order to maintain and develop the defence and security of the country and the nation.
[523] Pursuant to Article 3 of Government Decree 337/2022 (IX. 7.) on the Defence Administration Office.

main government offices[524] and central offices[525] as well as national security services. To a certain extent the Vbö. uses these obligations in a broad sense, as it includes the organisational obligations specified in related legislation, primarily in the implementing regulations, with the exception that paragraph 3 excludes the examination of professional activities of national security services in the narrow sense from the defence and security context. Thus, while the activities listed in Act CXXV of 1995 on National Security Services are excluded from the scope of control under the Vbö. , there is no rule of general exclusion in the case of the Hvt. and Act XXXIV of 1994 on the Police: military and law enforcement professional activities can thus be fully subsumed under the defence and security context, contrary to the primacy of national security interests.

Paragraph (2) of Article 72of the Vbö. concretises this by listing planning, organising, training and educational, preparation and task implementation activities as examples of inspection subjects, the in criteria of which may be efficiency, effectiveness and governmental coordination, as opposed to activities of sectoral interests or those carried out with unsuccessful or disproportionate expenditure.

From a methodological point of view, the Vbö. refers to the principle of objectivity and the interdependence of fact-finding, inference and recommendation. Overall, therefore, Article 72 sets out general level answers to the questions "who, where, what, how?". However, in the case of the implementing regulation,[526] it should be pointed out, that its 26

[524] Pursuant to Article 34 of Act CXXV of 2018 on Government Administration (hereinafter: Kit.), its establishment is subject to law. According to Article 2 Paraghraph (3) of Kit, the Central Statistical Office and the National Intellectual Property Office are currently main governmental offices.
[525] According to Article 36 Paragraph (1) of Kit., its establishment is subject to a law or government decree and a central office is subordinated to a minister. The Defence Administration Office falls into this category.
[526] Government Decree No 403/2022 (X. 24.) on inspections for defence and security purposes

sections set out the details of the procedure in as many as 75 paragraphs, some of which are broken down into bullet points. In doing so:

- the different frameworks of typology, overall, target and ex-post controls are separated,
- a methodology for programming the inspection, with an investigation and interactive proposal stage divided into data request and on-the-spot investigation, the allocation of responsibilities, and the system of procedural rights and obligations are laid down,
- a (third) body responsible for providing data on which the control function is based may be involved, and
- perspective capabilities of the national event management centre appear.

Overall, the rules at a governmental decree level are strict procedural provisions to ensure that a focused and factual report on inspection can contribute to the effectiveness of the processes under inspection and to the elimination of deficiencies.

3. Framework for exercises

Compared to the control rules, the proportion of statutory rules on exercises are much higher: it is about three times as large, compared to about 40% at the level of decrees,[527] and the latter regulations are not only of procedural nature, as the inclusion of rules on international practices actually extends the system of statutory categories, too.

The central category of Article 73 of the Vbö. is exercise, the scope of which includes training and preparation in the generic term in paragraph (1). From this point of view, although the categories of training, education and preparation under paragraph (2) are summarised in the concept of

[527] Government Decree No 405/2022 (X. 24.) on defence and security exercises

training, the categories under Article 73 are at an organisational level, whereas in the case of Article 72, it is the individual level that is decisive. The purpose of an organisational level concept is to achieve preparedness for defence and security tasks, although paragraph (1) excludes military exercises from the rules under the Vbö in general.

Paragraph (2) of Article 73 empowers the Government to order compulsory exercises of a government-wide nature involving a wide range of public bodies, with the proviso that the timetable prepared by the Defence Administration Office does not cover sectoral exercises. Paragraph (3) divides government-wide exercises in terms of the separation of the central and territorial levels together or by level or in terms of the focus on a specific task, with paragraph (4) stipulating that these exercises are subject to evaluation and government reporting. However, this typology is not specified.

Irrespective of the government-wide exercises, paragraph (5) also allows for the organisation of sectoral exercises, with the possibility of involving other bodies by agreement. In the case of these exercises, additional sectoral arrangements are permitted but the Defence Administration Office had to be provided information to ensure that the timing and programmes of exercises of different qualities can be coordinated.

Paragraph (6) of Article 73, while opening up at the same time the possibility of a statutory derogation, thus having the character of a framework, lays down the general limits to be observed in the course of organisation of exercises relating to defence and security tasks: these concern

- restricting the use of weapons and live ammunition, explosives or electronic warfare devices to designated sites,
- the requirement to inform the public about the use of weapons or pyrotechnic or electronic warfare devices in public places, in addition to the obligation to notify the police and comply with the conditions,

- the possibility of restricting public access to on-call and standby services of defence and security organisations,
- the possibility of restricting the activity of receiving clients without significant detriment to public interests, subject to prior information of the public,
- in the case of public services affected, the possibility of limitation, subject to prior and continuous information of the public,
- in general terms, the possibility of restricting traffic in the public areas and routes concerned, and
- the restriction of access to service in the context of electronic communications, data and information content.

The elements of the list under paragraph (6) may be assessed as a whole as proportionating measures aimed at favouring the interests of the exercise in conflicts between the interests of the defence drill and the pursuit of day-to-day activities but only in relation to the interests of preventing harm. In the case of exercises, the requirement of proximity to reality compared with day-to-day activity is likely to result in a capacity constraint, the effect of which could be offset by informing the public, in addition to locating dangerous activities but which cannot be conceptually total, since that would also infringe the requirement of proximity to reality and the classified information protection interests of the procedures. The feasibility of an interest-sharing framework supposes careful and forward-looking planning and flexiblility in the execution.

Mixing the elements of reality and practice entails risks comparable to the lack of practice of defence and security activities, and this risk is exacerbated by the need to be realistic, the absolute limitation of which, as set out in paragraph (7), is that the continuity of public order, public security, on-call and customer reception activities and public services, which are intended to safeguard the safety of life and property, must not be jeopardised by the restrictions set out in paragraph (6). Scenario testing may limit but shall not prevent operations.

Another important element of decree level rules is the use of an alert exercise outside the timetable, which can serve as a vision for the

feasibility of addressing a specific security challenge in terms of the elaboration and sophistication of procedures, should a central government decide to activate it.

4. Summary

The chapter on inspections and exercises of the Vbö. serves overall to provide system development and control functions related to the activities of the bodies and organisations involved in defence and security activities. Inspection can be summarised as an external control aimed at ensuring that the activities of a cooperating entity comply with the terms of reference of defence and security programming documents, while exercises are dominated by the main responsible entity, influenced by the governmental institutional system in terms of initiation and termination, programming and evaluation feedback.

While the activities of the Defence Administration Office as the central body of the defence and security administration dominate the control, which the audited body is obliged to facilitate, in the case of exercises the Defence Administration Office is limited to a primarily administrative, auxiliary role: the ordering of an unscheduled exercise is already a function of political discretion. However, the two activities, although having a different focus, can also be linked in that the activity of preparing exercises can also be the subject of an audit. This is also likely to take the form of an unplanned implementation as a feedback loop to a potentially lethal exercise, as a reaction to the realisation of a reality that transcends proportionality.

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XII.
Coordinated defence action - Chapter XI of the Vbö.

1. Introduction - the function of coordinated defence action

In the regulatory framework of Act XCIII of 2021 on the Coordination of Defence and Security Activities (henceforth Vbö.), coordinated defence activities are introduced as previously unknown elements in the domestic crisis management toolbox.[528]

According to the Act, the Government may issue a decree to this effect in the event of a serious or protracted defence and security incident if the management of a crisis or security incident involves the joint competence of several defence and security organisations or administrative bodies, and requires the application of measures provided for by the Act in the event of coordinated defence action or measures provided for in the NATO Crisis Response System.

The creation of coordinated defence action as a legal instrument reflects the view that while it is not always possible to address specific challenges through sectoral means, it is always justified to limit fundamental rights to an extent allowed by specific legislation in such situations. There is a need for a means of intervention - at the level and approach of the whole of government - that gives a broader mandate for responding to a security and defence incident than simpler sectoral rules.

The above rules of the Vbö. do not constitute an abolition of sectoral emergency rules. They reinforce the need for a sector-specific set of sectoral rules, backed up by a common, cross-sectoral framework of rules for coordinated defence action in the event that the management of an incident requires cross-sectoral action.

These kind of crisis management powers are not entirely unknown in the domestic legal order - let us think of the rules for natural gas supply crises,

[528] Vbö. section 74.

health emergencies or mass immigration crises. The novelty of coordinated defence action lies in the fact that the legislator grants authorisation in a rather broad and flexible way, integrating, where necessary, the technical content of all similar authorisation into one legal instrument.

In its decision ordering coordinated defence action, the Government may temporarily lay down specific rules on the powers and competencies of central state administration bodies under its control, which is a breakthrough as for the rules laid down by law for any period of no crisis. It could also be said that, in a way that does not affect the restriction of fundamental rights, it results in a quasi-special legal mandate for central public administrations. However, that authorisation is not without purpose. It is always purpose-specific and can only take the form of intervention linked to and justified by coordinated defence action. Furthermore, such a decision must not jeopardise the performance of basic tasks of the central public administration body concerned, as laid down in the Fundamental Law or by law, and must not, by implication, result in a breach of the constitutional framework.[529]

Coordinated defence activities are, moreover, an essential intervention in the functioning of public administration, in connection with the legislator's seeing fit to require the government to inform the President of the Republic and the committee of Parliament with the relevant powers.[530] This obligation covers not only the reasons for the promulgation but also the main measures envisaged.

[529] There must not be any modification of powers and competences which would result in the violation of an essential rule or constitutional limit which can only be enforced in a special legal order - e.g. it is not possible to define the armed defence of the homeland as the task of a central administrative body in a periodic measure of coordinated defence action, because in its content this would mean compulsory military service, which is only possible in a specific special legal order under the Fundamental Law.
[530] Art. 74 paragraph (3).

There is also an obligation to inform the public but only of the fact of the order and of the elements laid down in the legislation in a specific situation, taking into account the interests of national security as well.

2. Management of coordinated defence action and the tasks of participating bodies

Coordinated defence is essentially a statutory mandate of the Government for a whole-of-government crisis management, under which the preparation of decisions, government communication tasks, the management of operations and the implementation of measures introduced by the Government are coordinated by a designated member of the Government or a designated body of the Government with executive powers. This solution has many similarities with the various governmental operational teams[531] and action teams[532] known and used in the past, with the difference that the decision-making structure linked to a crisis can be developed and practised well in advance on the basis of a known legal framework, thus avoiding *ad hoc* solutions and helping to increase the effectiveness of defence. *Ad hoc* professional crisis management can be effective in a situation where there is a counter-interested and malicious party who is familiar with the system of defence but in crises where this is not the case, it can be particularly dangerous to

[531] See, for example, Government Decree No 286/2020 (VI. 17.) on the tasks of the Operational Staff for Epidemic Preparedness; Government Decision No 1012/2020 (I. 31.) on the establishment of the Operational Staff for the Control of the Coronavirus Epidemic; Government Decree No 297/2020 (VI. 24.) on the establishment and tasks of the Operational Staff for Economic Protection; Government Decision No 1088/2022 (II. 24.) on the Operational Staff for National Security.
[532] On the basis of Government Decision 1101/2020 (III. 14.) on further measures to be taken to combat the coronavirus, 11 action groups were formed, which carried out their tasks in almost all aspects of the challenge, and dynamized the functioning of the state organization in order to increase the effectiveness of protection action.

disrupt the rehearsed procedures and decision structures in a crisis period.[533]

It should be stressed that the Vbö. does not intentionally specify which *"member of the Government or body of the Government with decision-making powers"* will be the minister or government body but will be determined in each case in the light of an actual situation as it arises. It is likely that in the case of a flood the Minister of the Interior would be empowered, while in the case of a defence-type crisis the Minister of Defence would be empowered, and in the case of an energy supply crisis, the Minister responsible for the area would be empowered to coordinate the response. It is also conceivable that the Prime Minister him- or herself would be empowered by the Government, taking into account the gravity or the likely impact of the situation.

The designated member of the Government shall immediately report to the Government in the context of his/her crisis management duties if he/she considers that the proclamation of a special legal order would be reasonable for an effective management of the situation, since the proclamation is the responsibility of the Government in the case of an emergency, and that of Parliament in the case of a state of emergency or a state of war. In the latter cases, the Government takes the initiative. If the proclamation of a special legal order is not necessary, it may also propose the imposition of measures related to coordinated defence action, the introduction of measures under the NATO Crisis Response System or the imposition of crisis measures as defined by law, as well as the mobilisation of additional defence and security forces necessary for coordinated defence action.

[533] It is worth noting that it is not practical to change the main elements and focal points of the decision-making structure on a case-by-case basis, even in the event of the biggest crisis, as such a change may complicate the flow of information and may create uncertainty at the level of implementation, since it deviates from the well-practised and functioning channels. Rather, it is advisable to draw up several versions of rules for crisis management, practise their implementation in peace and establish the conditions, so that it is no longer a problem to introduce them in a given crisis situation.

The role of the Defence Administration Office,[534] the central body for defence and security management, cannot be overlooked in the context of coordinated defence action. This administrative body[535] ensures the coordination of the whole-of-government approach to the preparation of decisions for crisis management, the organisation of inter-ministerial cooperation and, by special decision, the channelling of government decisions to the operational implementation level through the operation of the National Incident Management Centre.

3. Measures that may be taken in the framework of coordinated defence action

In the context of coordinated defence action, the Vbö. lists powers for the Government, some elements of which may already be familiar from other crisis management instruments. The crisis management rules of the asylum act[536] and the health act[537] are clearly identifiable antecedents of the regulation, which have been applied from 2015 in the context of protection against illegal immigrants and from 2020 in the context of protection against pandemics - with a rather high degree of effectiveness.

Subject to it, the Government may order, in the event of a coordinated defence action being ordered:

- temporary traffic restrictions on certain routes,[538]
- increased control of the state border,[539]
- increased controls or temporary restrictions on crossing state borders,

[534] 337/2022. (IX. 7.) Government Decree on the Defence Administration Office.
[535] See Article 52.
[536] Act LXXX of 2007 on the Right of Asylum.
[537] Act CLIV of 1997 on Health Care.
[538] Such an authorisation is part of the police's scope of action even without the declaration of a coordinated defence action (see Act XXXIV of 1994, section 35/B), so in this case, traffic restrictions may be imposed on grounds beyond these.
[539] This provision is not only relevant in the context of illegal migration, such a measure may also be necessary in a national defence crisis.

- restrictions on passenger and transport movements in certain areas of the country,
- the restriction of access to and organisation of certain institutions, facilities or events related to the nature of the event giving rise to the order for a coordinated defence action,
- the application of access restriction, control and security arrangements to enhance the security of designated public areas and institutions,
- the joint use of designated forces of defence and security services for the interception of particularly dangerous persons in connection with incidents giving rise to the order for coordinated defence action,[540]
- the application of supplementary rules on public education, higher education, vocational training and adult education.[541]

In order to ensure flexibility, the Act also allows for the introduction of other measures not listed above, which are not restricted by law and which are directly related to the management, elimination, prevention or recovering from of the harmful effects of an incident, without restricting a fundamental right.[542] The exclusion of further restrictions of fundamental rights in the case of this "rubber rule" of coordinated defence is fully understandable, since it is the specific legal order[543] that can authorise an extreme restriction of these rights.

In the case of coordinated defence action, however, the principles of the Civil Defence Act discussed earlier must also be applied, particularly the

[540] This provision has been introduced in view of the fact that, following the ninth amendment to the Fundamental Law, the legal status of a terrorist emergency has been abolished, and in most cases such situations should be dealt with in a normal period, or, if it is not possible, a state of emergency may be declared.
[541] The practical precedent for that was the use of online education instead of face-to-face education during the COVID-19 pandemic, and the introduction of specific rules on examination periods and requirements in higher education.
[542] See Art. 76 (1) (i) of the Vbö.
[543] An essential element is that fundamental rights may be restricted in peace in certain cases, but that must be explicitly laid down by law. Let us just think of police action when a person is arrested, which is also a restriction of rights. However, in the case of coordinated defence action, such a possibility exists only as listed.

principles of necessity and proportionality. That is, the government may only take measures directly related to the performance of coordinated defence action, which are indispensably necessary and proportionate to the management, elimination and prevention of the adverse effects of an incident that gives rise to coordinated defenceaction.[544]

In addition to the above requirements, the legislator also sets further limits on coordinated defence action. Accordingly, the Government may introduce measures under coordinated defence action only in a manner appropriate to the circumstances giving rise to its order and in the area of the country necessary to meet the challenge. It is also an essential rule that these measures are limited to a specific period of time, which may not exceed three months. It should be noted here that it is not the duration of the period of coordinated defence action itself that is limited but that of the individual measures.

Should it nevertheless be necessary to maintain the measures in force in order to deal with a crisis situation, a separate decision will have to be taken at central government level. The extension is possible for a further three to four months on a case-by-case basis but the President of the Republic and the relevant committee of the National Assembly must be informed of the reasons for the extension.

The experience of the 2015 European terror wave, the crisis caused by mass immigration and the subsequent management of the COVID-19 pandemic gave rise to a provision under which the Government may order the Hungarian Defence Forces to assist in the performance of related police tasks in respect of measures introduced in the framework of coordinated defence action. This provision provides the basis for the basic tasks of the Defence Forces, which are not necessarily of a traditionally military nature, and in which the involvement of armed forces is justified because their hierarchical organisation, their independent logistical system capable of withstanding a high degree of crisis, and their easily mobilisable personnel, equipment and special means enable them to

[544] See in particular section 4 a) and c) of the Vbö.

provide support which is essentially immediately applicable in the broadest sense of the term in crisis management tasks. Such tasks of the Defence Forces must be specified by law in accordance with the Vbö., which is done by the Hvt. as follows:

> *"Hvt. § 59 (1) The Defence Forces shall exercise the following functions with the right to use weapons: (...)*
>
> *(l) contributing to defence and crisis management tasks under the Vbö., in particular in the management of threats to public order and public security and in the coordinated defence action,*
>
> *(...)*
>
> *(2) The Defence Forces shall perform the following tasks without the right to use weapons: (...)*
>
> *h) supporting the tasks under the Vbö. with military expertise and special equipment."*

It fits into the system of the Vbö. and its whole-of-government approach is well exemplified by Hvt. Chapter XV, it defines a defence crisis situation as a legal institution existing as of 1 November 2022 as coordinated defence action which the Government may order[545] on the proposal of the Minister responsible for defence for the purposes specified in the Defence Act. A national defence crisis situation may be ordered in view of the effects in Hungary of a crisis in a neighbouring state requiring military intervention and directly threatening Hungary's security, on the one hand, and in the event of an external armed attack or a threat of an act of a military nature, in whole or in part, having an effect equivalent to an external armed attack, on the other hand. It may also be ordered in preparation for the fulfilment of military obligations in connection with Articles 4 or 5 of the North Atlantic Treaty,[546] Article 42

[545] Hvt. section 107 paragraph (2).
[546] This is the so-called consultation and collective defence clause between NATO member states.

(7) of the Treaty on European Union,[547] and Article 222 of the Treaty on the Functioning of the European Union.[548]

In view of its place in the legislation system and the measures that may be applied, a state of war or a state of emergency may not be declared, and in such cases, a previously declared state of emergency must be terminated immediately.

A national defence crisis is broader than a catalogue of measures that may be ordered for coordinated defence action by virtue of the law, in the light of which the Government may introduce the following measures

- enhancing the readiness of the defence organisation,
- the intensification of the activities of the Military National Security Service and the Defence Forces' reconnaissance, counter-intelligence and cyberspace operations forces to prevent the spread of a threat to Hungary and its escalation in Hungary,
- the mandatory publication of official statements for public service broadcasters,
- the stockpiling of products, energy sources and consumer goods important for defence,
- the filling of posts and positions important for the functioning of public administration, the defence administration, the Defence Forces and bodies involved in defence, through a simplified procedure, and the performance of overtime work,
- the introduction of restrictive rules on the use of radio spectrum, the preparation of special modes of operation,
- the necessary introduction of military air traffic control in Hungarian airspace and at airports,
- the application of alert levels that also affect citizens,

[547] Article 42 (7): In the event of an armed attack against the territory of a Member State, the other Member States shall, in accordance with Article 51 of the Charter of the United Nations, give all assistance and support available to that State. This shall be without prejudice to the security and the specific nature of its protection policy.
[548] This is the so-called solidarity clause between EU member states in the event of a terrorist attack or disaster.

- the coordinated action of trained forces of the Defence Forces and the police to prevent or avert serious acts of violence by restricting or excluding access to certain public institutions and places of public use.[549]

A similarly specific regulation is contained in Chapter XIV of Act CLIV of 1997 on Health Care (Act on Health Care), which defines a health care crisis as a coordinated defence action that the Government may order on the proposal of the Minister responsible for health care, on the basis of a proposal of the National Chief Medical Officer, if an epidemic emergency or other circumstances[550] defined by law make it necessary. A health emergency may be declared for the whole of Hungary or for a defined area of Hungary, and during the period of an emergency, the application of the Health Emergency Ordinance is also a prerequisite unless otherwise provided for in the Health Emergency Ordinance and Government Ordinances issued for its implementation.

It should be stressed that, given the specific nature of crises in health sector, the case of coordinated defence action provided for in the Health Act allows for the introduction of measures[551] which are much more specific than general ones and that a crisis situation itself may be declared for a maximum period of six months, which may, however, be extended if necessary. The Government shall report on the extension to the Parliamentary Standing Committee on Health.

A health emergency as a coordinated defence action is also a special case in that, when a special legal order is introduced, these measures are

[549] Hvt. section 107 paragraph (4).
[550] Art. 228 pararaph (2).
[551] See in detail the provisions of Articles 229-232 of the Labour Code, which cover, among many others, a wide range of areas from patients' rights, teleworking rules, specific operational restrictions for certain institutions, rules on contact between persons, to the possibility of compulsory vaccination. It should be noted that the vast majority of measures have been incorporated into the law by an urgent, necessary and ongoing crisis management legislation to deal with the COVID-19 pandemic, perhaps focusing too much on epidemic-related issues at certain points.

automatically applicable throughout the country but in this case a specific declaration of a health emergency is not necessary.

4. Summary

The main function of coordinated defence action is to provide a framework for whole-of-government crisis management at a time when sectoral intervention or normal inter-sectoral cooperation is no longer sufficient to meet a challenge but there is no justification for restricting citizens' rights to the extent that a special legal order would be required.

Coordinated defence action is a new legal instrument, the practical experience of whose application is still lacking but a specific catalogue of measures set out in the legislation allows for a broad spectrum of security threats and challenges for the 21st century to be addressed, thereby contributing to the security of life and property of citizens.

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XIII.

A new regulatory framework for crisis management at national and NATO level - Chapter XII of the Vbö.

1. Introduction

The terms 'crisis' and 'crisis management' have been used continuously by mankind for centuries, certainly in different senses, contexts and connotations. Literature is also replete with theories on crisis, and some authors have even attempted to create a concept of crisis. To date, however, no universal definition of crisis has been adopted, and there is still a complete plurality of different interpretations. Examining the issue from a legal point of view, we can only say that the Hungarian law in force - like international law - does not know a definition of crisis. Some countries have created their own definition of crisis but the majority of states simply use it as a self-evident term that does not require a definition. In our country, too, attempts have been made to create a general definition of crisis but unsurprisingly, without reaching a consensus or even a result near consensus. One reason for this is that it is unlikely that an adequate, objective legal definition can be drawn up, because the term crisis is so complex and multifaceted. On the other hand, crisis theorists are also inclined to the view that it is unfortunate, or perhaps not even possible, to establish an objective definition of crisis.

The first question is indeed, whether the concept of crisis should be seen from an objective or a subjective perspective. In the case of a completely objective concept of crisis, it is possible that the situation that has arisen, although serious, does not imply any change in the decision-making process because decision-makers do not see the situation as a crisis. The reverse may also be true: the situation may not be a real crisis but decision-makers may perceive the situation as critical and act according to the rules for crisis management.

The various sectors have, however, with more or less success, coined the term "professional" crisis or crisis with the same or similar content. For example, in our existing law, there is a health crisis,[552] natural gas supply crisis,[553] oil and petroleum products supply crisis,[554] electricity supply crisis,[555] mass immigration crisis,[556] defence crisis,[557] and disaster.[558]

These concepts of crisis or related concepts are devoid of any conceptual, logical, substantive or methodological coherence. They have all been created by specialists in different sectors and disciplines with different perspectives. This can sometimes lead to confusion in interpretation or application but it is possible that we are on the right track, at least in terms of the main direction. If, for the reasons set out above, it is necessary to abandon a general and objective definition of crisis, the solution may be to define specific types of crisis, which is much easier and involves far fewer potential conflicts.

The experience of real-life crises also suggests that a categorical distinction between military and civilian crises, which existed in the past and still exists today, is increasingly unnecessary. It is therefore, appropriate to talk not about whether a crisis is purely military or purely civilian but about the set of (civilian-military) capabilities needed to deal with it effectively. At most, we can talk about the dominance or primacy of one side or the other. In this approach, the categorical distinction

[552] Health crisis: see Article 228 (2) of Act CLIV of 1997 on Health Care.
[553] Natural gas supply crisis: see Article 97 of Act XL of 2008 on Natural Gas Supply.
[554] Crisis situation in the supply of petroleum and petroleum products: see Act XXIII of 2013 on the Emergency Stockpiling of Imported Petroleum and Petroleum Products section 1, point 5.
[555] Electricity supply crisis: see Section 139 (1) of Act LXXXVI of 2007 on Electricity (2007).
[556] Crisis situation caused by mass immigration: see Article 80/A of Act LXXX of 2007 on the Right of Asylum.
[557] Defence crisis: see Article 107 of Act CXL of 2021 on Defence and the Hungarian Defence Forces.
[558] Disaster: see Act CXXVIII of 2011 on Disaster Management and the Amendment of Certain Related Acts, section 3, point 5.

between civilian and military is lost and replaced by a definition of the supported or supporting side.

These tendencies have clearly led to a move towards a complex approach to crisis management, as in the case of a complex, multi-factorial crisis, no single sector, discipline or organisation may be able to see all the interconnections and dimensions of the complex crisis. It is unlikely that a single sectoral perspective will be able to identify all the values at stake and their interrelationships. The large number of actors involved in crisis management makes some level of coordination mechanism essential to increase cohesion. It is almost impossible for a single sector or body to have all the information, knowledge, expertise, experience, manpower, technical equipment, logistical support and financial resources needed for complex crisis management.

The clear conclusion to be drawn from the above is that the challenges of our time require a coordinated and coherent response from different civilian and military capabilities, both in national and international dimensions. That has led to the emergence of the theory of a joint and coordinated application of civilian and military capabilities, which is referred to in literature as *Comprehensive Approach.*

Since the early 2000s, comprehensive approach has developed into a generally accepted theory in major international organisations (UN, NATO, EU), which have consistently applied the concept in practice, with varying success. In addition to international organisations, individual countries have also realised the importance of developing and improving coherence and coordination between crisis management actors in modern crisis management. At the level of nations, it is manifested in the form of cooperation between organisations operating in the country. Accordingly, in many countries, concepts for cooperation between different governmental and non-governmental agencies and organisations have been developed, based mainly on *inter-ministerial cooperation* and *interagency cooperation.* In practice, it has given rise to a national version

of a comprehensive approach, which has become known in literature as the *Whole of Government Approach.*

As we will see, our crisis management system, as defined by the reform of defence and security, is clearly based on a comprehensive approach and a spirit of whole-of-government cooperation. One of the important objectives of the reform and related legislation was precisely to establish a conceptual, systemic, legal and organisational framework for that.

2. NATO's crisis management system

The need to develop a NATO Crisis Management System was expressed by the member states and NATO bodies at the 1999 NATO Summit in Washington and in the Strategic Concept of the Alliance adopted at that event. At the Summit, the participants reaffirmed their comprehensive approach to security that the Alliance had endorsed in 1991 following the end of the Cold War environment. In addition to the defence dimension, NATO attaches great importance to political, economic, social, humanitarian and environmental factors in crisis management, thereby broadening the Alliance's overall scope of crisis management.

During that period, NATO was still using the *NATO Precautionary System (NPS),* a flexible response to the Cold War military concept, to manage crises and conflicts, which was no longer adequate to respond proportionately to new security challenges, provide a unified allied rapid response to terrorism and asymmetric warfare, or deal effectively with small-scale armed incidents scattered around the world at the same time. Basically, the NPS was only applicable to massive military action and lacked comprehensive crisis management capabilities needed for smaller challenges.

At the Prague Summit in 2002, member states committed themselves to aligning their national crisis management procedures and systems with the NATO *Crisis Response System (NCRS),* which was currently being developed. The North Atlantic Council launched NATO's new crisis

management system on 31 September 2005, replacing the long-obsolete NPS.

The system was designed taking into account the Alliance's strategic objectives adopted in 1999 and NATO's new crisis management process to replace Cold War procedures. The concept of crisis response is fundamentally about responding rapidly to emerging and existing security crises and armed conflicts, which can address new challenges, such as threats from cyberspace and international terrorism, in addition to traditional military threats, and can also be applied to disasters in areas of high Alliance priority, particularly within NATO battlefields.

The new, modern system places a strong emphasis on crisis prevention, which can draw on diplomatic, economic and arms control tools in addition to military instruments, and is capable of supporting the preparation and implementation of Article 5 operations and crisis management operations outside the framework of the Washington Treaty. In addition to the measures taken towards military organisations, the system will use the civilian capabilities of Member States in the management of crises, through cooperation between national law enforcement and military bodies, civil emergency planning and its successor civil preparedness, public information and communication.

It is a good example of the accelerated processes of our time, once NATO's new crisis response system was established and consolidated, international security situation had changed to such an extent that the need for a comprehensive reform of the system was seriously considered within the Alliance. The NCRS, which replaced the Cold War-era NATO Precautionary System, was designed to meet the security challenges of the time, primarily for so-called *non-Article 5* expeditionary operations outside NATO territory. The system was perfectly suited to a peace support operation in, for example, Iraq or Afghanistan and even proved to be a state-of-the-art tool during the annexation of the Crimea in 2014, although by then, the Alliance's strategic focus had clearly shifted back

to the traditional East and it was only a matter of time before the recently consolidated NCRS had to be rethought.

That moment arrived with the Russia-Ukraine war of 2022. After more than ten years, NATO adopted a new strategic concept in 2022, reflecting the significant changes in the security environment that had taken place in the meantime. The new Strategic Concept reaffirms NATO's core objective of 360 degrees of collective defence, defining three main tasks for the Alliance: deterrence and defence; crisis prevention and management; and cooperative security.[559]

NATO's interpretation is peculiar in that it treats crisis management as a separate category and consistently understands it as referring only to non-Article 5 operations outside NATO territory, thus placing conventional countering of threats in the East under the task of deterrence and defence, i.e. not considering it a crisis management task. In fact, the NCRS was also written primarily for expeditionary operations but its measures can also be applied to Article 5 operations. Accordingly, NATO activated the NCRS in 2014 following the annexation of the Crimea and again in February 2022 following the outbreak of the Russia-Ukraine war. Current events have highlighted the unfortunate return of conventional armed conflict in Europe, which poses a threat to both the continent and the Alliance. It has also become clear that the NCRS in its current form, tailored primarily to expeditionary operations, is not suited to an adequate response to threats from the East, and so thinking has begun in earnest about a transformation of the Alliance's crisis management system.

3. Domestic Adaptation of the NATO's Crisis Response System

In the NCRS Handbook of Measures,[560] which entered into force at the end of September 2005, the Alliance made a recommendation to Member

[559] NATO 2022 Strategic Concept (NATO SC); *https://www.nato.int/nato_static_fl2014/assets/pdf/2022/6/pdf/290622-strategic-concept.pdf*

[560] The NATO Crisis Response System Operations Manual is a classified document, except for some provisions including the recommendation mentioned here. There is a reference to it in open domestic legislation in Article 2 (3) of Government Decree 399/2022 (X. 21.) on the decision-making and tasking in connection with the NATO

States to develop their own crisis management systems in line with the NCRS or to modify their existing systems accordingly. The question then arose as to what crisis response system Hungary has in place and how it should be adapted to NATO requirements. After a brief analysis, it was concluded that there are systems in place and functioning in Hungary to deal with specific types of crises, assigned to specific sectors. These include national defence, law and order, civil defence, disaster management, the health care system, counter-terrorism, and so on. However, it is far from reality that all these - one could say - 'crisis response subsystems' form a coherent whole, i.e. a national crisis response system.

In 2005, the Defence Office of the Ministry of Defence started work on a domestic adaptation of the NCRS and inter-ministerial consultation was launched. In addition to military measures, the NCRS also includes a number of civilian arrangements, such as economic measures, diplomatic measures, measures related to media, transport infrastructure, civil air traffic control, protection of civilian communications and transport assets, protection of critical civilian infrastructure, protection of the government, protection against weapons of mass destruction, civil defence, health insurance, counter-terrorism, etc. If our national system is to be developed in line with this, civilian measures must inevitably be part of it. It was a matter of concern for most ministries, who feared that the Ministry of Defence would seek to regulate issues beyond its competency. In their view, this would have infringed on the competence and powers of the individual sectors.

Due to the significant differences of opinion, the legal mandate for the domestic adaptation of the NCRS was also adopted after lengthy

Crisis Response System and on the rules for the application of the National Response System, and on the tasks related to the operation of the National Response System in accordance with the NATO Crisis Response System 20/2014 (III. 21.) HM Order 20/2014 (III. 21.) in point 2 b) of the National Emergency Response System Management Regulation.

discussions and negotiations. In 2004, the following mandate was introduced into the then Defence Act: *"The Government is empowered to establish by decree the purpose, tasks, procedures and obligations of the participants of the national response system in accordance with the NATO Crisis Response System."*[561]

It is immediately clear from the text of the mandate that it is the result of compromises, and many of the contentious issues mentioned above are bypassed. The legislative text deliberately avoids the term national crisis response system, nor has a national crisis concept been established. It implies that the legislator did not intend to create a single crisis response system and continued to deal with each type of crisis on a sectoral basis, sometimes with a legally fixed and organised system, sometimes with *ad hoc* inter-ministerial cooperation. Instead of a national crisis management system, a National Intervention System (NIR) had to be set up, and the mandate set out a strict framework, with a list of taxonomies, for regulating the system's purpose, tasks, procedures and the obligations of the actors involved.

After the entry into force of the mandate, the processing and adaptation of more than 200 NATO crisis response measures to domestic conditions started, resulting in the NIR Manual, which contains national measures and a narrative guide for their application, modelled on the NCRS Manual. At the same time, attempts were made to translate the tasks of the NIR at government level into legislation, which was also the subject of considerable professional debate. Four years after the commencement of the NCRS and the statutory mandate for the NIR, the Office of the Secretary of State for Defence prepared a technical draft of a government proposal.

Above all, the proposal suggested a fundamental change in the domestic approach to crisis management, replacing the compartmentalised system

[561] Act CXIII of 2011 on National Defence and the Hungarian Defence Forces and on Measures that May Be Introduced in Special Legal Regimes, Section 81 (1) (b) of Paragraph 1).

along sectoral lines, by a single channel for the flow of information, analysis, assessment, proposals, decision-making and coordination of implementation, regardless of the type of crisis, under a single procedure, coordinated by a single central body. The proposal envisaged the preparation of decisions and coordination at the level of the government, above the ministries. The most efficient organisation for that purpose was the creation of a Government Crisis Management Committee (GCC), which would be solely responsible for proposing decisions to the Government on the basis of the peer review analysis and for coordinating the preparation and implementation of crisis management tasks.

The GCC would have been chaired by the Prime Minister, and its members would have been the Minister in charge of the Prime Minister's Office, the Minister for Defence, the Minister for Foreign Affairs, the Minister for Justice and Law Enforcement, the Minister for Local Governments and Regional Development, the Minister without portfolio for civil intelligence and the Minister without portfolio for government coordination.

According to the proposal, the activities of the GCC would have been supported by a Government Crisis Management Centre (GCMC), under its direct subordination, which would have been centralised and integrated in one location, ensuring an efficient and cost-effective use of central and sectoral crisis management capabilities at government level. It can be said that the 2008 NIR government proposal already contained the elements that pointed towards a comprehensive approach and whole-of-government crisis management, which are important pillars of the current defence and security reform. The initiative did not receive the necessary professional support due to strongly divided sectoral positions and the proposal was not submitted to the Government in its then form.

After a two-year period of "latency", the renewed version of the NIR was back on the negotiating table in 2010, having learned from the experience of previous unsuccessful technical and administrative negotiations. By this time, the vision of a single national crisis response system had been

dropped from the agenda, and the new proposal was strictly limited to developing a domestic equivalent of the NATO crisis response measures contained in the NCRS, with national procedural rules for the preparation and implementation of those measures. The new concept finally entered into force in 2011 with the adoption of Government Decree 278/2011 (XII. 20.) on the purpose, tasks, procedures and obligations of the contributors of the National Response System (NIR Regulation), which is in line with the NATO Crisis Response System.

The NIR Regulation no longer included the Government Crisis Management Committee; it did not change the existing structure of administration, and it only laid down specific procedural rules for a rapid, operational introduction and implementation of national measures. However, perhaps the most important principle for a comprehensive approach remained intact in the Regulation. As with the NCRS, the NIR included civilian-type measures, which naturally implied the need for civilian and military capabilities to work together. Accordingly, in addition to the organisations of the Ministry of Defence and the Hungarian Defence Forces, the system is operated with the participation of central state administration, law enforcement and other civilian contributors, thus creating an important condition for a domestic implementation of the comprehensive approach concept formulated at the level of the Alliance, namely civil-military cooperation and coordinated joint action by the various disciplines in crisis management.

The organisations involved in the operation of the system may be sectorally responsible bodies and cooperating bodies, according to their place of activity. The activities of sectorally responsible bodies are coordinated by the national coordinator, who coordinates the activities of the heads of sectorally responsible bodies in relation to NIR and NCRS, liaises with relevant NATO bodies and makes proposals to the Government for the initiation or withdrawal of the NCRS at the allied level, the introduction or withdrawal of national measures. There is also an important role for the cooperating bodies, which support the sectorally responsible bodies in the implementation of sectoral tasks defined in the

national measures by carrying out sub-tasks and national tasks undertaken by single nations in the implementation of the NCRS in the allied framework.

In order to implement the tasks arising from the operation of the NIR in a coordinated way, the National Collection of Measures has been developed, which includes measures

a) helping to prevent crises,
b) supporting the preparation and implementation of crisis response operations, and
c) of security alert levels related to a terrorist threat.

ad a) Preventive measures include diplomatic, economic and special counter-terrorism activities in accordance with the allied concept. Hungary can implement these activities effectively only in cooperation with other Member States, using diplomatic and economic means to isolate an aggressor and assist a threatened country. By applying special counter-terrorism measures, Hungary is also enhancing the exchange of information on terrorism with partner countries in addition to its allied Member States.

ad b) Another important type of action in the National Collection of Measures is the support for the preparation and implementation of crisis response operations. The tasks included in the crisis response measures set out in the National Collection of Measures are implemented by the ministries as sectorally responsible bodies with the support of other cooperating ministries and intermediate bodies. The identification of sectoral responsibilities has been based on a pairing of tasks and competences of ministries and the subjects of measures, which have been identified alongside the military one:

- national security,
- national economy,
- energetics,
- communication,
- international relations,

- critical infrastructure,
- civil defence,
- the public service media and public order

generate measures to be taken, and represent sectoral responsibilities and powers in relation to them.

ad c) Other important elements of the NIR are the measures related to security alert levels for terrorist threats, which help to ensure a consistent understanding of the threats from the organisations involved in the operation of the system. The system differentiates between threat levels A, B, C and D according to the severity of the threat, as follows:

"A": the possibility of carrying out a terrorist attack cannot be excluded;

"Level B": a known terrorist organisation is likely to carry out a terrorist attack against a facility;

"C": a terrorist attack is expected to be carried out against a facility or a terrorist attack has been carried out somewhere in the country;

"D": an act of terrorism is about to be or has been committed against an establishment.

The NIR is continuously tested in the framework of NATO's *Crisis Management Exercise (CMX),* which has provided a wealth of practical experience, improving the ability and readiness of national crisis management bodies to use the system year after year. Drafting decisions is greatly facilitated by the fact that we have pre-prepared and agreed templates of crisis response measures, which are in line with NATO measures of a similar nature. A web interface on NATO's (non-public) website shows which NATO-proposed measures have been implemented and which have been rejected by individual Member States. That will allow Member States to continuously harmonise their responses, thus increasing their effectiveness.

The first "live" application of NCRS and NIR took place in 2014 in the context of the annexation of the Crimea, which also provided a lot of

useful experience.[562] The usefulness of NIR became evident from the moment NATO introduced the measures. Thanks to pre-established national measures, it did not take more than 10 minutes to identify the national equivalent of the NATO crisis response measures put in place. It was then immediately possible to identify which ministry had the first local responsibility, who the collaborators were, what the relevant legislation was and what tasks needed to be carried out on an organisational basis.

Perhaps the most puzzling aspect of the whole process was the legal background to the introduction of the measures. While the NIR Regulation sets out the main legal framework, its practical application has highlighted the shortcomings of the lack of a legal norm for the introduction of crisis response measures by the National Assembly, the Government, and the competent Minister. In the absence of a written legal source, these have all been developed by practice with the agreement of the actors concerned. The view developed in crisis response practices is that, in general, there is no need for a legislative form but that the decision to introduce measures can be taken basically by means of public law instruments, primarily in the form of a decision.

The NIR system has also been overhauled as part of the defence and security reform, including the domestic regulation of NATO crisis response. The first, most important and systemic change is that NCRS and NIR were previously of a national defence function, with the Minister of Defence responsible for national coordination under the Defence Act and the NIR Regulation. Accordingly, the Ministry of Defence was responsible for the development and operation of the system. However, Act XCIII of 2021 on the Coordination of Defence and Security Activities (Act XCIII of 2021, Vbö.) has transferred the whole issue to the

[562] For more details see László KESZELY: Experiences in the Application of NCRS Compatible National Crisis Response Measures' System in Connection with the Ukrainian Crisis, Hungarian Yearbook of International Law and European Law 2015, Eleven International Publishing, The Hague, 2016, pp. 257-262.

responsibilities of the Defence and Security Administration,[563] in a separate chapter, the reason being that many NIR crisis response measures are of a civil nature, thus going beyond the competence of the Ministry of Defence and requiring whole-of-government coordination. The inter-ministerial nature of the NIR is beyond dispute, as the inter-ministerial coordination between ministries and other actors has so far been carried out by the Interministerial Working Group on Defence Management Coordination (HIKOM), i.e. through which inter-governmental cooperation has been implemented. According to the provision of the Vbö., the preparation for and the implementation of state tasks related to the operation of the National Action Plan are coordinated by the central body of the defence and security administration, i.e. the role of the national coordinator has been taken over from the Minister of Defence.[564]

The NIR Regulation has been taken over by the Vbö., thus raising the rules on the applicability of the NIR to the level of statutory regulation, according to which the measures of the National Response System, which is in line with the NATO Crisis Response System, shall be applied:

- if NATO has taken the initiative to put crisis response measures in place with member states;
- if it is necessary for Hungary to initiate the introduction of NATO crisis response measures at the allied level, or if it is necessary to deploy allied armed forces in Hungary or to call upon other allied crisis response capabilities in Hungary, and the body entitled to introduce national measures in accordance with the crisis situation or threat thereof so decides;
- during international or national exercises using the NATO Crisis Response System and in preparation for such exercises;

[563] Vbö. sections 77-78.
[564] Government Decree 399/2022 (X. 21.) on the rules of decision-making and tasking in connection with the NATO Crisis Response System and the application of the National Response System, Article 2, point 7.

- in the specific national interest, independently of the NATO Crisis Response System, in the event of such a decision by the Government.

The content of the cases detailed above has not changed substantially compared to the NIR Regulation. Accordingly, the most typical case for the introduction of NIR measures remains that where NATO takes the initiative to introduce them vis-à-vis Member States. In addition, Hungary, like any other Member State, may initiate the application of measures at alliance level (NATO and/or individual Member States) and there may also be cases where a measure is only applied in Hungary. Finally, it is also a common case where measures and national mechanisms are tested in international or national exercises.

Compared to the previous NIR Regulation, it adds some legal and guarantee elements to the NIR framework. Certain crisis management measures may require legal restrictions and, in their implementation, defence and security organisations (Hungarian Defence Forces, law enforcement agencies, national security services, Parliamentary Guard) are entitled to use coercive measures. However, the restrictions may only be to an extent necessary to protect the defence and security interests giving rise to the restrictions, i.e. the law applies the requirements of necessity and proportionality in this aspect as well. A further element of the guarantee is that the public must be informed of the restriction at the same time as it is imposed. With regard to public bodies, the Vbö. provides that, in order to apply the measures of the NIR, the operation of certain public bodies and the reception of clients may be restricted to the extent necessary to protect the interests of defence and security. These potential restrictions, coupled with the enforceability of NIR measures, make the need to address the above-mentioned problem of the need to define in some form the legal norm or norms in which the NIR measures are to be introduced even more pressing. This is unavoidable since it is only possible to impose a legal restriction and, if necessary, enforce it by enforcement if the legal norm providing the legal basis for it is in force.

In order to ensure the operational conditions, the Vbö. entrusts the Government with the task of developing and operating an infrastructure supporting the operation of the NIR. This primarily means an IT system capable of handling and transmitting NATO classified data, since at least the NIR national coordinator, sectoral responsible parties and the most important collaborators must have an IT endpoint capable of receiving and transmitting NATO messages, including coded and other classified content. Without this, meeting extremely tight deadlines for decisions and modern crisis management in the 21st century in general, is unthinkable.

As mentioned above, the Act establishes a legal framework and empowers the Government to establish the detailed rules for decision-making and tasking in the context of the NATO Crisis Response System and the rules for the application of the National Response System in accordance with it.

On that basis, the relevant government decree[565] - in addition to defining the sectoral responsible body and the cooperating bodies - also specifies that:

- what is meant by NATO crisis response measures;
- what the National Collection of Measures is;
- what the NIR consists of;
- what is considered a NIR application period;
- which is the body responsible for national coordination of the NIR and which is the operational body coordinating national crisis management; and
- what a national crisis response measure consists of.

In addition to the above, the legislation stipulates:

- the purpose of the NIR;
- cases where a NATO crisis response measure may be introduced,

[565] Government Decree 399/2022 (X. 21.) on the rules related to decision-making and tasking in the context of the NATO Crisis Response System and the application of the National Response System.

- elements of the NIR;
- the process of national coordination of the NIR;
- the tasks of cooperating bodies;
- the elements of infrastructure supporting the operation of the NIR;
- the main content elements of the Collection of National Measures,
- the arrangements for communication and cooperation;
- its notification and alert procedures; and
- how government decisions taken in the framework of the NIR are transmitted to competent NATO bodies.

4. Structure of the National Crisis Management System

In our country, the professional circles of defence administration have already and repeatedly expressed the need to unify our crisis management system, which is divided into sectoral segments, along some kind of logic. From the side of defence administration, László Lakatos already in 2001 specifically raised the need for a nation-wide crisis management structure: *'It is necessary to create a system for crisis situations that do not require the introduction of qualified periods but which differ from the normal period (see the 1995. The legal basis for dealing with the domestic effects of the Yugoslav-Croatian military conflict in August 1995 or the NATO operations against Yugoslavia in March-June 1999) and the organisational framework for crisis management at government level (operation of a National Crisis Management Centre)."*[566]

The same idea was also expressed by disaster management expert Balázs Bognár: *"In order to add new elements to the tasks of defence administration and to resolve the contradictions between the current central management, which is separate and fragmented according to the*

[566] LAKATOS, László (2001): The place and role of defence administration in the system of national defence. Doctoral thesis (PhD). Budapest, Zrínyi Miklós National Defence University, 2001. p. 111.

different defence administration activities, it would be advisable to assign the tasks of ad hoc management and governmental decision preparation to a single governmental committee. [...] The functioning of a single government commission would entail the reduction of management centres in the ministries for the benefit of government management and their use at the sectoral level. This would allow professional decision-making to take place in an integrated management centre."[567]

The need to integrate crisis management has also been expressed from the perspective of security studies. Research conducted in 2008 by a research team led by Péter Tálas concluded that *"dealing with complex security problems requires a multifunctional, flexible, broad-spectrum security structure capable of cooperating with civil and international organisations, civil authorities, governmental and non-governmental organisations",* and that an integrated security system was the appropriate way to achieve this. However, it should be added that, in their understanding, an integrated security sphere is not about creating a 'security super-institution' but about an integrated functioning of the institutional system. They envisaged a central leading body for security governance above ministries in the then Prime Minister's Office. It was also important to note that, in their view, the basis and organisational framework for an integrated security system would be created by the defence administration.

In addition to the theoretical concept of an integrated management structure, concrete feasibility studies have been carried out. In 2014, a comprehensive and detailed proposal for a crisis management centre model was made by Ottó Dsupin and József Kónya, who argued that *"the creation of crisis management centres is justified by the need to increase the efficiency of management processes, which should be professionalised in line with the nature of the crisis."* The authors outline

[567] BOGNÁR, Balázs: The possible modernisation of the defence administration system of the Republic of Hungary. PhD thesis. Budapest, Zrínyi Miklós University of National Defence, Kossuth Lajos Faculty of Military Science, Doctoral School of Military Science, 2009. p. 96.

the organisational structure of a crisis management centre and the functions of individual departments as follows:

- collecting and processing information,
- situation assessment,
- preparing decisions,
- providing a background of expertise,
- tasks of cooperation,
- operational intervention,
- management, coordination and control.[568]

A quite novel viewpoint can be found in the study of Resperger's "DIADAL" crisis management method, which divides a crisis management process into six successive phases: diagnosis, direction, alternatives, decision, application and closure. The method would be applied to crises in Hungary other than peacetime crises that cannot be handled by normal methods, and the organisational operational framework would be provided by a national crisis management centre, the National Incident Management Centre. The "DIADAL" method would assign the tasks of all the other phases of the six-phase process to the National Incident Management Centre, with the exception of the decision and closure phases, which are essentially political in nature.[569] The essential feature of both the Dsupin-Kónya crisis centre model and the DIADAL method is that they do not envisage a sectoral or professional structure but a whole-of-government structure, which would be applied to crisis management in general, without limiting it to a specific type of crisis or a period of special legal order.

The theoretical and structural possibilities of implementing a comprehensive approach at national level and the role of defence administration in that process were analysed in detail by László Keszely

[568] DSUPIN, Ottó – KÓNYA, József: Activities of crisis management centres. In: Dobra Nagy., National Institute for National Security, 2014. p. 334.
[569] RESPERGER, István: The use of "DIADAL" and other methods in national crisis management. In: "Using "DIADAL.DIADAL" and other methods of "Dialogue and other forms of crisis management."

in his doctoral thesis.[570] Taking into account the structure and functioning of defence administration, international theories and practices on the comprehensive approach and the results of national adaptation achieved so far, he developed a possible model of a national system of crisis management along the following principles:

- *"The Model is all-hazards based, so for the purposes of the crisis, it should be understood as all civilian and military types of crisis.*
- *The Model should also be applied in special legal regimes and in so-called sub-threshold crisis situations that do not require a special legal regime.*
- *Within the governmental decision-making body, organisational integration should be established for analysis, planning, implementation, monitoring and evaluation at government level, while a looser coordination mechanism for the implementers is sufficient to ensure as much independence and freedom of action as possible.*
- *Modern knowledge management methods must be used to deal with complex, knowledge-intensive crises."*

The focus of the national crisis management structure described in the Model is a newly established national crisis management centre, whose possible functions, structure, main tasks and operational principles are explained in detail in the thesis.

The system of defence and security administration and national crisis management established by the reform of defence and security is therefore in many respects not without precedent, and its theoretical underpinnings can be found in a number of cites in literature. The major breakthrough is that the system of whole-of-government crisis

[570] KESZELY, László: The role of the defence administration in the implementation of the national comprehensive approach, PhD thesis. Budapest, Zrínyi Miklós National Defence University, 2017. pp. 227-243.

management, which had hitherto been advocated only in studies and other publications, has been given legal form by the Vbö., creating the possibility and the legal framework for its practical implementation. It could be said that the theory has been further developed and successfully put into practice.

If we look at the regulation of the Vbö. as such, we can see that a logical crisis management system is built on the basis of a single, coherent concept. The system focuses on the central body of defence and security administration, which coordinates the administrative tasks related to Hungary's security and defence interests and their performance, and operates a national incident management centre, whose main task is the professional coordination and harmonisation of all-governmental crisis management and the provision of special legal tasks during preparation and at the time of defence and security incidents.[571] Taking into account the fact that the Incident Management Centre is in fact the equivalent of the National Crisis Management Centre, the Centre, together with the central body of the Defence and Security Administration, will provide a structural basis for the professional coordination of whole-of-government crisis management. Accordingly, it is here that crisis-related information must be received, analysed, and evaluated according to uniform principles and methods. On the basis of this information, decision alternatives can be drawn up for decision-makers. In itself, it seems to be a single-channel, easily transparent system under the Vbö, but if we add to the system defined here the other organisations responsible for crisis management tasks under other legal provisions, the picture is much more nuanced.

In addition to the defence and security reform that had been planned and prepared for several years, current events have shaped and are shaping our crisis management system. One of the most recent developments in this process is the establishment of the Defence Council on 26 July 2022, which the Prime Minister justified by stating that *"the protracted war in*

[571] Article 52 (c) of the Act.

Ukraine and the ensuing economic crisis in Europe, as well as the increasing migratory pressure, mean that special attention must be paid to the protection of Hungary's security and sovereignty in the coming years."[572]

The Defence Council is a special policy-making forum of government decision-making, chaired by the Prime Minister and assisted by the Chief National Security Adviser. The members of the Defence Council are the Minister in charge of the Prime Minister's Office, the Minister of the Interior, the Minister of Defence, the Minister of Foreign Affairs and Foreign Trade and the Chief National Security Adviser, who is appointed by the Prime Minister. The Secretary of State for Public Administration of the Prime Minister's Office is a permanent guest at the Defence Council. The Defence Council shall meet as necessary but at least every two weeks, and any member may call an extraordinary meeting.[573]

The Defence Council, as a decision-making body of the Government, has a very wide range of responsibilities and powers, covering 23 subjects in total, and the list is not exhaustive. All of these are at least indirectly related to crisis management, and several of them are directly related to it. The Defence Council is responsible for, among other things:

- the management of civil intelligence activities,
- coordinating defence and security activities,
- procurement for defence and security tasks,
- defence developments,
- to protect the safety of life and property,
- border policing,
- defence,
- immigration and asylum,
- disaster preparedness,

[572] Official website of the GOVERNMENT OF HUNGARY: *https://kormany.hu/hirek/megalakult-a-vedelmi-tanacs*

[573] Government Decision No 1352/2022 (VII. 21.) on the Government's Rules of Procedure, points 108-112.

- the fight against terrorism.[574]

In light of the above, the Defence Council is an important actor in the national crisis management system, namely the organisational element embodying the political decision-making level. Its remit also includes the coordination of defence and security activities, i.e. it is directly and explicitly linked to the Vbö. system. Accordingly, the activities of the Defence Council are expected to be closely intertwined with those of the Defence Management Agency, which will be the central body for defence and security management from 1 November 2022.

The work of the Defence Council is supported by two specialised professional forums: the Working Group on National Security and the Working Group on Defence and Law Enforcement.[575] Both are decision-preparatory bodies of the Defence Council. The overlap in terms of membership is very significant, with a number of individuals serving in both bodies. In terms of membership, it can be said that the two working groups essentially represent the professional senior management level. Three exceptions are the Minister in charge of the Prime Minister's Office, the Minister of the Interior and the Minister of Defence as members at the senior state level, although they also appear in the Working Group as leaders responsible for a specific area of expertise rather than as politicians.

The Working Group on National Security has the main responsibilities and powers in relation to the activities of the following bodies: the Office for the Protection of the Constitution, the National Security Service, the Information Office, the National Information Centre, the Military National Security Service, the Counter-Terrorism Centre, the Defence Headquarters, the relevant ministries. The working group for these bodies:

[574] 182/2022 (V. 24.) Government Decree on the scope of duties and boundaries of the members of the Government section 190.
[575] Government Decision 1352/2022 (VII.21.) on the Government's Rules of Procedure, item 47.

- proposes to the Defence Council the tasks and measures necessary to protect national security and monitors their implementation;
- ensures the exchange of information between the bodies in the context of the protection of national security and proposes the performance of specialised tasks related to their activities, their coordination and the order of responsibilities;
- ensures the direct, coordinated exchange and collation of information obtained by the bodies within their remit and competence which may be used for operational, crime prevention, law enforcement, detection and counter-intelligence purposes in the context of the protection of national security, and ensure operational cooperation;
- if necessary, it will make requests for information to the bodies and ask for cooperation from public bodies not under the Government's control;
- coordinates the intelligence, operational and official actions of the services and proposes the necessary measures according to the operational situation.[576]

The Working Group on Defence and Law Enforcement has responsibilities and competences in relation to the activities of the following bodies: National Police Headquarters, Counter-Terrorism Centre, National Defence Service, National Information Centre, National Directorate General for Aliens Policing, National Directorate General of Disaster Management, National Tax and Customs Administration, Defence Headquarters, National Command of the Penitentiary, relevant ministries. The working group for these bodies:

- proposes to the Defence Council the tasks and measures necessary to protect public safety and the safety of life and property as well as monitors their implementation;

[576] Ibid. points 57-59.

- ensures the exchange of information between the agencies in the context of the protection of public security, the defence of the homeland and the fulfilment of federal obligations, and proposes the performance of specialised tasks related to their activities, their coordination and the order of responsibilities;
- ensure a direct, coordinated exchange and collation of information obtained by the bodies in the exercise of their functions and powers in connection with the protection of public security and national security, the protection of life and property, and operations, and information which may be used for operational, crime prevention, law enforcement, detection and counter-intelligence purposes, as well as operational cooperation;
- if necessary, it will make requests for information to the bodies and ask for cooperation from public bodies not under the Government's control;
- coordinates the intelligence, operational and official actions of the services and proposes the necessary measures according to the operational situation.[577]

As it can be seen, the tasks of the two working groups are very similar in type, almost identical, the difference being in the target and the bodies involved, although there is some overlap.

As regards the two working groups, whether in terms of their function and tasks or their composition, it can be said that they play an important role in preparing and coordinating decisions and therefore they operate as crisis management bodies. Despite the significant number of overlaps, there are *de jure* two separate bodies although in practice their activities, especially in the acute phase of a crisis, are difficult to separate *de facto*. For example, the Military National Security Service is a member of the Working Group on National Security but not of the Working Group on Defence and Law Enforcement. In the event of an armed conflict or other

[577] Ibid, points 60-62.

military-type crisis, it is difficult to imagine that the decision-preparatory work in the Working Group on Defence and Law Enforcement would take place without the NSS. There is, of course, scope for proposals on military national security issues to be developed within the framework of the Working Group on National Security but in any case situations must certainly be avoided where the two working groups operate in complete isolation, in parallel or, in the worst case, in rivalry with each other. If sharing information and cooperation within the two working groups is not accompanied by sharing information and cooperation between the two groups, it is easy to end up with divergent, possibly competing, proposals on the Defence Council table.

To summarise the above, the structure of the national crisis management system at the level of the whole-of-government can be summarised as follows:

The structure of the national crisis management system at the level of the whole-of-government		
Organisation	**Function**	**Level**
Defence Council	decision-making	political level
Working Group on National Security	decision preparation, coordination	professional senior management level
Working Groupon Defence and Law Enforcement	decision preparation, coordination	professional senior management level
Defence Administration Office	professional coordination, management of territorial defence committees	interdepartmental, professional level
National Incident Management Centre (under construction)	analysis, evaluation	expert level

Table 1. National crisis management system bodies at the level of the whole-of-government, their function and level (prepared by László Keszely)

The table clearly shows that a system has been created that combines the different levels and functions in a logical unity, so that the structure can generally ensure a smooth division of labour and cooperation between the different organisations. In any case, there are still questions about an appropriate delimitation of responsibilities. Examples include the collection of information, its analysis and the development of technical proposals, which can be classified as the tasks of the Working Group on National Security, the Working Group on Defence and Law Enforcement, the Defence Management Office and the National Incident Management Centre. Each of these same organisations performs some form of cross-sectoral, whole-of-government coordination, with some overlap between the bodies involved in the coordination (e.g. Hungarian Defence Forces, law enforcement agencies, national security services).

5. Cases of crisis management at whole-of-government level

We have reviewed the structural background of our national crisis management system but in order to get a full picture of the system, it is necessary to analyse the process of crisis management, including specific cases and legal institutions that fall under the scope of crisis management. As already mentioned above in this chapter,[578] our legal system knows a number of types of crisis situations and their corresponding content, a fact which is also highlighted in other publications.[579] We shall also discuss in detail, without claiming to be exhaustive, those cases where broad intergovernmental cooperation is clearly predominating, while we shall refrain from discussing those cases which are more characterised by professionalism or the management of a sector or a professional field. Taking all this into account, we are going to focus on the following specific cases of crisis management:

- special legal order,
- defence and security event,

[578] See footnotes 1-7.

[579] KÁDÁR, Pál – HOFFMAN, István: The challenges of the special legal order and crisis management in administrative law: the place and role of "quasi special legal orders" in the Hungarian public administration. Public Law Review, 2021/3, pp. 1-11.

- coordinated defence action,
- a national defence crisis,
- averting an unexpected attack,
- a disaster,
- a health crisis.

5.1. Special legal order

Special legal order is discussed in a separate chapter, so we will only make a few observations worth highlighting here.

Different perspectives have emerged as for the relationship between crises and special legal order but the two are in many respects interlinked. As regards their delimitation, it can be stated that periods of special legal order have a start or end date determined by a public law decision. A crisis, on the other hand, is dynamic in nature, with a process, a life cycle of stages,[580] determined by real events. Thus, while the special legal order period, or the lack thereof, is *de jure,* the crisis situation is *de facto.*

The conclusion to be drawn from the above is that we need to think of crises as real, dynamic processes in an integral context, and special legal order as a static phase of the crisis determined by public law decisions. In other words, special legal order is nothing other than one of the phases of a crisis, probably the most serious phase, when the instruments of normal legal order are not sufficient to deal with the crisis effectively.[581]

It would not be logical for a country to start its crisis management machinery in a crisis situation and then switch to another mechanism as soon as special legal order is promulgated. This is completely illogical and far from being realistic. Following the life cycle of a crisis, it can be seen that in its initial stage, it can be dealt with by normal legal order tools but that later on it may require, for example, a coordinated defence action,

[580] RESPERGER, István: The changing tasks of the armed forces in the management of military armed crises. Doctoral thesis. Budapest, Zrínyi Miklós National Defence University, 2001. p. 50.

[581] KESZELY, László: The Special Legal Order from the Practical, Legal-Applicative Perspective of the Defence Administration. Iustum Aequum Salutare XIII. 2017. 4. p. 81.

a national defence crisis or other special measures outside some form of special legal order, and that at a certain stage of escalation, the use of special legal order is indispensable for crisis management. Once the crisis has passed its peak, at a certain point the application of special legal order becomes unnecessary and disproportionate and should therefore be discontinued but crisis management continues with other normal legal instruments until the initial situation is restored.

A good example of that is the first wave of the COVID-19 pandemic, where the crisis first emerged as a health and epidemiological professional issue, and then escalated to cover homeland security, economic, critical infrastructure protection, finance, public services, labour, education, transport and a range of other areas, ultimately creating a complex crisis situation across the country.

The method and intensity of crisis management have been adapted to this process. In the early stages of the epidemic, the Government took specific crisis management measures within the framework of normal legal order, such as the creation of the Operational Coronavirus Control Working Group at the end of January 2020, the start of mass production of protective masks, the suspension of admission of illegal immigrants to transit zones, the cancellation of 15 March celebrations, a ban on visits to all inpatient and residential social care facilities, as well as the covering of faces on public transport. As the epidemic continued to worsen, on 11 March 2020, the Government declared a state of emergency, i.e. it added to the crisis management toolbox those exceptional measures that could be declared under special legislation. These have already fundamentally affected the functioning of the economy and people's daily lives and activities, including restrictions on the freedom of movement. As the situation improved, the state of emergency declared in March was lifted on 18 June and replaced by an epidemic alert. The instruments of special legal order were, therefore, no longer needed, while the adoption of specific crisis management measures under a normal legal order remained justified.

Taking into account the life cycle of crises as outlined above, the reform of defence and security has transformed our crisis management system along the logic of giving the executive as much leeway as possible without the need to introduce special legislation, i.e. increasing the normal range of crisis management tools available to the government under the rule of law. In addition, the reform promotes continuity in crisis management by removing the powers of the Defence Council and the President of the Republic to issue emergency measures under special legislation, leaving only the Government with the power to take the measures necessary to resolve the crisis, both under special legislation and outside it.

Pál Kádár confirms the above principle as follows: *'In the domestic public law system, the depositary of executive power is still clearly the body that is most operationally capable of making decisions and has the appropriate apparatus and procedures for this purpose, which it can apply immediately. Any other decision-making centre - the National Assembly, the Defence Council, the President of the Republic - would either not have adequate crisis management experience, or would have a less specialised apparatus less prepared to deal with crisis situations, or would be hampered in its effective defence tasks by the uncertainty of the transition to a special legal order, the time and delay involved in taking over powers, or the uncertainty arising from the transition of the whole State organisation to a special legal order. One of the basic principles of defence and security reform can undoubtedly be identified in the above-mentioned point, i.e. that the executive should be given the broadest possible mandate to carry out defence tasks, and that the legal means to do so should not be an obstacle to guaranteeing the security of citizens'.* [582]

[582] KÁDÁR, Pál: Analysis of the basic concept and possible perspectives of the defence-security regulatory reform system, Defence Security Regulatory and Governance Workshop 2022/8., National University of Public Service, Research Workshop on Defence Security Regulatory and Governance. p. 6.

If we look at the nature of special legal order cases, including the type of threat, we can see that the Fundamental Law distinguishes three different types of threat, if you like, crisis:

- military-type crisis (state of war),
- a homeland security type crisis (state of emergency),
- disaster management type of crisis (emergency or state of danger).

The tenth amendment of the Fundamental Law disrupts this clear, logically uniform system of special legal order cases by adding to the original emergency of the disaster management type the cases of armed conflict and war in a neighbouring country, i.e. an emergency can be introduced in the case of such military crises as well.[583]

In all three special legal situations, the Government can introduce all emergency measures without discrimination so that - at least in principle - it can have almost similar room for manoeuvre in the event of a state of war or emergency. The essential difference is that while a state of war can be declared by Parliament, and by a 'large' two-third majority (two-thirds of all MPs voting), a state of emergency can be declared by the Government, i.e. it can decide on its own. To complete the picture, the Government may, following the initiation of a state of war or a state of emergency (i.e. before the proclamation), suspend the application of certain laws by decree, derogate from certain provisions of the law and take other extraordinary measures, i.e. make use of the full range of possibilities provided for by special legal order.[584]

If we add to all this that instead of the extraordinary measures previously containing specific facts, the Vbö., by virtue of its framework, only specifies the scope of extraordinary measures, within which those measures can be freely taken, it can be said that the principle of the defence and administrative reform has been fully implemented with regard to special legal order, so that the executive power is given the

[583] Article 51 (1) of the Fundamental Law.
[584] Article 54 (1) of the Fundamental Law.

greatest possible leeway and the most flexible reaction possibilities to take the measures necessary for the defence of the country.

However, some argue that this scope is already too broad and vaguely defined, which could lead to legal uncertainty and potentially arbitrary application of the law. In that regard, both the Fundamental Law and previously the Constitution introduce(d) rules of guarantee to ensure parliamentary control. On the one hand, it sets a time limit for the state of emergency and the state of danger (both can be introduced for 30 days). The state of emergency can be extended by Parliament for a further 30 days, and the state of danger by the Government but only with the authorisation of Parliament. Another element of guarantee is that a decree issued by the Government during a special legal order in accordance with the rules governing a special legal order may be repealed by Parliament.[585] A repealed decree may not be reissued by the Government with the same content, unless justified by a significant change in circumstances.[586] The Vbö. itself also contains a restrictive provision in accordance with the principles of necessity and proportionality, according to which the Government may exercise its powers in relation to extraordinary measures, to the extent necessary and proportionate to the objective pursued, in order to prevent, manage, eliminate the event triggering a state of war, state of emergency or state of danger, as well as prevent or remedy the harmful effects of such events.[587]

Finally, it is worth mentioning that the President of the Republic has retained an important, specific legal competence in the new legislation. If Parliament is prevented from acting, the President of the Republic is empowered to declare a state of war, declare and extend a state of emergency and authorise the Government to extend a state of danger. The President of the National Assembly, the President of the Constitutional

[585] Article 53 (3) of the Fundamental Law.
[586] Such a case could be, for example, a substantial change in the military situation in a state of war, or a change in an economic, political, financial or military factor that significantly affects the country's defence capabilities.
[587] Art. 80 (3) of the Vbö.

Court and the Prime Minister shall unanimously declare that Parliament is prevented from sitting if Parliament is not in session and there is an insurmountable obstacle to its convening due to a shortness of time or circumstances giving rise to the proclamation of a special legal order.[588]

5.2. Defence and security events

In its interpretative provisions, the Vbö. provides a definition of a defence and security incident, i.e. the cases in which the mechanism of defence and security management must be activated.

By law, a defence and security incident is:

- a sectoral breakdown, crisis or emergency, as defined by law, not constituting a special legal regime, or a serious incident affecting the supply, security or supply continuity of the population;
- a disaster or threat of a disaster;
- a serious event affecting the order and protection of the state border;
- an incident posing a serious threat to law and order, public order or public security;
- a serious event that damages or threatens the continuity of State functioning;
- a military threat that significantly affects Hungary;
- an event giving rise to a allied obligation,
- the occurrence or significant threat of a terrorist attack.[589]

The cases defined in the above list are practically identical in content or typology to the types and content of the special legal order cases, or at least very close to them. Accordingly, there are military-type, homeland security-type and disaster management-type defence and management incidents. The text of the law itself does not give any specific guidance

[588] Article 56 (1)-(2) of the Fundamental Law.
[589] Vbö. article 5 point 15.

as to when, under what conditions and at what level of escalation we can speak of a security and defence incident, i.e. where the threshold is set for sectoral crisis management to be replaced by whole-of-government cooperation. Careful consideration is also needed as to how and on the basis of which principles and rules security and defence incidents can be distinguished from special legal situations.

In the general spirit of the reform of defence and security and the Vbö., we find some guidance on these issues, the guiding principle being that sectoral competences should not be damaged, i.e. that a crisis should be managed within a sectoral framework as long as a single sector has the necessary information, human resources, technical means, budgetary resources, etc., i.e. that the conditions for successful crisis management are provided by the resources of a single sector. In addition, when the capabilities of other sectors need to be mobilised or when additional sectors or disciplines are otherwise involved, the whole-of-government tools and coordination mechanisms of defence and security administration should be activated. This approach is quite flexible and essentially leaves the decision to the discretion of the law enforcer. It is precisely this kind of flexible crisis management structure that the reform of defence and security was intended to create.

In the same way, the comparison of necessary and available means can be used as a method to distinguish between a defence and security incident and a specific legal order. When a defence and security incident occurs, the crisis may still be managed under normal law (for example, in the form of a coordinated defence action) but reaching a certain level of escalation, i.e. when the available means are no longer sufficient and such measures are needed that can be introduced under special legal order, the management of the defence and security incident is reinforced by a special legal order. Thus, the crisis management process itself is not interrupted but the arsenal of instruments that can be deployed is expanded.

5.3. Coordinated defence action

Coordinated defence action is discussed in Chapter XIII of this volume. Here we include some further observations.

Coordinated defence is in fact a whole-of-government form of crisis management. The reason for a somewhat cumbersome name is that the legislator deliberately avoided the terms 'crisis' and 'crisis management' because of the anomalies of interpretation and differences of opinion mentioned above. Looking at the terminology from a substantive point of view, we can say that:

- defence and security event = crisis situation
- coordinated defence action = government crisis management

The starting point for examining the command-and-control structure for coordinated defence activities is that the Vbö. identifies four basic forms of coordination of activities during this period:

- decision-preparation,
- government communication tasks,
- managing operations,
- implementing the measures introduced by the Government.[590]

Given the general, whole-of-government, professional coordination nature of the tasks, one could also conclude that these tasks are carried out by the central body of the administration for defence and security, which was set up for precisely these tasks. By contrast, the Vbö. provides that the above tasks are to be coordinated by a designated member of the Government or a designated body of the Government with decision-making powers, although it is added that it has to be conducted in cooperation with the central body of the administration for defence and security, so that the central body is likely to have a substantive role in the process. The weak point of the legislation on this issue is that, while the

[590] Article 75 (1) of the Vbö.

reform of defence and security seeks to establish a unified crisis management system based on a standard structure, this specific command and control regime reintroduces *(and deliberately retains, for the sake of flexibility - editor's note)* the possibility of ad hoc, case by case management, which represents a certain step backwards from the undesirable trends of the recent past.

The situation is further complicated by the fact that the person or body designated on an *ad hoc basis* may, in addition to their management and coordination powers, also propose to the Government or to the competent member of the Government the ordering or introduction of certain measures or the involvement of additional defence and security forces necessary for coordinated defence action.

The designated person could be a member of the Government, i.e. a Minister (presumably according to the type of crisis), and the Defence Council is most likely to be the body with decision-making powers. However, this body has two other supporting bodies, the Working Group on National Security and the Working Group on Defence and Security, both with a proposal-making function. This has the potential to mix decision-making, decision-preparation and coordination functions between the different bodies to a certain extent, weakening the coherence of the crisis management structure and mechanism as well as complicating the decision-making process *(the contradiction is, however, apparent, as the working groups are not operational bodies, their functioning is typically relevant in the normal course of the rule of law - editor's note).*

In addition to the whole-of-government aspects of crisis management, it is not uninteresting to briefly touch upon some sectoral types of crises from the national defence and disaster management systems, as they are also part of the national crisis management system.

5.4. National defence crisis

Defence crisis is regulated in the Defence Act, i.e. in a sectoral law, so at first sight it can be considered a sectoral legal institution. At the same

time, the Act defines it as a type of coordinated defence action, so from this point of view it falls within the sphere of whole-of-government crisis management.[591] Although the decision-making and command-and-control system is the same as for the rules on coordinated defence action, the specificity of a crisis situation in the field of defence is that it can be ordered on the basis of a proposal by the Minister of Defence, on the one hand, and in the event of a military type of crisis, on the other.

If we compare the possible cases of the imposition of a state of war and a state of national defence crisis as two legal instruments linked to a military type of threat, it is immediately apparent that they are extremely close. In fact, they represent the same three basic cases with some differences, mainly in terms of the level of escalation.

of declaration	
state of war	**defence crisis Cases**
declaration of war or threat of war	a crisis in a state neighbouring Hungary, requiring military intervention and directly threatening Hungary's security
an external armed attack, an act having an equivalent effect to an external armed attack and the imminent threat thereof	an external armed attack or a threat of an act of military nature, in whole or in part, having an effect equivalent to an external armed attack
fulfilment of an allied obligation of collective defence	in order to prepare for military obligations in connection with Article 4 or 5 of the North Atlantic Treaty, proclaimed by Act I of 1999, Article 42 (7) of the Treaty on European Union and Article 222 of the Treaty on the Functioning of the European Union

Table 2. Cases of the declaration of a state of war and a state of national defence crisis
(by László Keszely)

[591] Act CXL of 2021 on Defence and the Hungarian Defence Forces, article 107 paragraph (1).

The state of war and the state of national defence emergency very much express the continuity in crisis management that we have explained above in relation to the relationship between special legal order and a crisis. The nature of the threats is thus more or less the same in both cases, the difference being that in the process of a crisis, at a certain stage of escalation, special measures must be taken but still within the framework of normal legal order, and that is the purpose of the coordinated defence action called a national defence emergency. However, if a crisis escalates further, it may be necessary to introduce a special legal regime, namely martial law. That context and logic is also reflected in the provision that a state of national defence crisis cannot be declared and that a declared state of national defence crisis must be lifted immediately if a state of war or state of emergency has been declared,[592] and consequently a state of national defence emergency cannot be introduced in parallel with a state of war or state of emergency.

5.5. Countering an unexpected attack

The type of crisis known as "averting of an unexpected attack" is very similar in content to the special legal order previously regulated in the Fundamental Law as an "unexpected attack", in fact it is a modified version of that. The old special legal order is an unexpected intrusion by external armed groups, while the new type of crisis imposes an automatic obligation on the Government to act in the event of an unexpected attack[593] without any attribute. However, if we look at the interpretative provisions of the Hvt. we find that the law defines an unexpected attack as an unexpected invasion of the territory of Hungary by an external armed group with military equipment or an armed act carried out on the territory of Hungary.[594] Thus, we can see that the adjective "armed" as a

[592] Hvt. section 107 (3).
[593] Hvt. section 108 (1).
[594] Hvt. section 3, point 29.

criterion is maintained, and even supplemented by the fact that the armed group is equipped with military equipment.[595]

However, both the old and the new situation are the same in that the adoption of measures does not have to be preceded by a formal decision under public law, in simple terms, unlike in other specific legal orders or crisis situations, they do not have to be promulgated and the adoption of measures is not a matter of discretion but the Government is obliged to take all necessary measures immediately with forces proportionate to the attack and prepared for it. This solution provides the Government with a highly flexible crisis management tool in unexpected cases where any delay would seriously endanger the effectiveness of crisis management.

5.6. Disaster

Disasters can also be classified among sectoral crisis types, the internal content of which is defined by the Disaster Management Act. According to the definition, a disaster is a situation whose prevention or management of impacts exceeds the capacity of the designated organisations to perform protection in the prescribed cooperation framework and requires the introduction of special measures and a continuous and strictly coordinated cooperation of local authorities and public bodies.[596] As we have seen with the crisis in the field of defence, a crisis of this type, which is otherwise of a sectoral nature, also has the characteristics of a crisis and whole-of-government crisis management. If we think about it, continuous and strictly coordinated cooperation between municipalities and public authorities is nothing other than a coordinated defence action. According

[595] In this context, the question of the delimitation of a surprise attack or a state of war may arise, which, although in its external form is a public law decision, in its internal content can be decided on the basis of military, professional principles, when justifying which form to introduce. The country's armed defence plan and subsequent operational plans can provide the main guidance. The problem of the public law delimitation is also complicated by the fact that according to the Hvt. Article 3 (6), the declared or initiated state of war and the period of repulsion of an unexpected attack both fall within the period of armed conflict.

[596] Act CXXVIII of 2011 on Disaster Management and the Amendment of Certain Related Acts (Kat.) section 3, point 5.

to the EC Treaty, a disaster, or the threat of one, is a protection and security incident,[597] and therefore has both sectoral and intergovernmental characteristics.

The definition of a major incident in the Disaster Management Act confirms this dichotomy in that it is described as a protection and security incident, and disaster management authorities, as primary interveners, has the power to manage and conduct coordination but that power only covers the immediate response measures necessary to preserve the safety of life and property and lasts until the central body of the defence and security administration takes up its coordination role, specifically until the central cross-government body takes over the management and coordination.[598] All this shows that the separation of sectoral and central governmental functions as well as the definition of the corresponding management and authority structure in the disaster management system is not entirely unproblematic, either.

5.7. Health crisis

As a result of the COVID-19 pandemic, the rules of the previously existing legal institution of a health emergency have been significantly supplemented and amended. Similarly to national defence crisis, health crisis is regulated by a sectoral law,[599] thus it is basically a sectoral legal institution but with the entry into force of the Vbö. it has also become a type of coordinated defence action, so the relevant provisions of the Vbö. apply to it.

A health emergency may be declared in the following cases:

a) in the event of a public health emergency of international concern or other epidemic threat (epidemic emergency) under the Act on the Promulgation of the International Health Regulations of the World Health Organization;

[597] Article 5 paragraph 15 (b) of the Act.
[598] Kat. section 3, point 11.
[599] Act CLIV of 1997 on Health Care, sections 228-232/H.

b) in an event that endangers or harms the life, physical integrity or health of citizens or the operation of health care service providers, which leads to an imbalance between health care needs and available local capacity and requires the cooperation of the public health administration, health care providers and other public and municipal authorities;
c) in a situation that seriously and directly impedes the provision of health care to the public in the area of care of a medical institution, provided that the provision of health care to the public in its area of care by another medical institution would be disproportionately difficult.

A state of public health emergency may be declared for the whole territory or a specific area of Hungary and may remain in force for a maximum of six months. If the conditions for maintaining emergency continue to exist, the Government shall extend its duration and report to the Parliamentary Standing Committee on Health. In the case of a special legal order, the health sector automatically enters into emergency mode, i.e. the provisions on emergency health care apply nationwide but health emergency does not then need to be declared expressly. The same rule applies in the event of a mass immigration crisis declared for public health reasons. In that case too, the provisions on emergency health care apply without a health emergency having to be declared.

In the context of epidemiological preparedness, the Government has quite a wide margin of manoeuvre in a health crisis. It can adopt a large number of crisis management measures in its regulations, sometimes even exceeding the level of emergency measures that can be introduced under special legislation, which have a significant impact on the functioning of the economy and the way of life of people.

One of the remaining elements of *ad hoc* crisis management structures prior to the Vbö. is the possibility for the Government to set up an operational staff in a health crisis. In principle, it is compatible with the relevant provisions of the Vbö., since in the event of coordinated defence

activities, tasks are coordinated by the designated member of the Government or the designated body of the Government with decision-making powers in cooperation with the central body of defence and security administration. The operational body could thus be the body designated by the Government (the decision-making power is now questionable) but that *ad hoc* coordinative body would then 'only' have the permanent body for whole-of-government coordination, i.e. the Defence Management Agency, and even the National Incident Management Centre, which it operates, as a contributor. The latter, moreover, is intended to replace ad hoc operational teams, which are also permanent bodies with a basic function virtually identical to that of an operational team. It is, certainly, necessary to maintain an operational cell for a transitional period but once the National Incident Management Centre is in place, it would be more appropriate for the national incident management centre itself to become the primary coordinating body, together with teams of experts with specific expertise needed to deal with a health crisis.

6. Summary

The above analysis clearly shows that the defence and security reform has brought about systemic changes in our national crisis management system, and has put the domestic tasks related to NATO's Crisis Response System on a new footing. The transformation has laid the foundations and created the operational conditions for a much more coherent system. It brought together the diverse systems and sub-systems based on sectoral foundations and logic under a cross-sectoral, whole-of-government umbrella, implementing the structure much advocated in the literature. The conditions have thus been created to remedy the shortcomings that had long characterised our crisis management system, namely:

- we do not have a decision-preparation and decision-making mechanism that covers the whole spectrum of crises, or at least the management of several types of crises;

- the lack of a single set of criteria for analysing and assessing crisis situations;
- we do not have an integrated early warning, warning and alert system at national level;
- there is no consistent crisis management coordination structure and mechanism.

The defence and administrative reform and related legislation (in particular the Vbö.) have created a coordination, cooperation mechanism as well as a management and governance system capable of addressing these shortcomings, so the principle and the legislative background are ensured. The next step is to put it into practice, without departing from the spirit and logic of the Vbö. The use of *ad hoc* solutions, so characteristic of the recent past, must therefore be avoided as far as possible, and the system must be constantly patched up and adjusted in the light of current threats and challenges, disrupting thus its coherence. An example of this undesirable trend is the addition of a national defence type of situation to a disaster management type of emergency, or the management and coordination of concerted defence activities by an *ad hoc* person or body. The most avoidable solution is the proliferation of different operational teams created on an ad hoc basis in recent years, i.e. a crisis management structure reacting to each threat with an *ad hoc* decision-making element. That modus operandi is not sufficient to ensure effective crisis management, as ad hoc operational teams and their working structures are not coherent, the staff is not coherent, their procedures are not well developed and the technical background is not well elaborated.

In comparison, the planned establishment of a National Incident Management Centre is a huge step forward. If its structure, operating mechanism, technical and IT background can be worked up, it will be able to fulfil its role as the main node of a national crisis management system.

The definition indirectly tells us how the organisation should work and when it should be activated. The purpose of a national incident command centre is to ensure the professional coordination of cross-government crisis management, i.e. it should be activated when crisis management goes beyond the scope of a single sector and inter-ministerial, inter-organisational cooperation becomes necessary. However, the term 'activation' should be used with caution and should not be interpreted as implying that in the absence of activation the centre's activities cease and that, consequently, the desired mode of operation is continuous. A national incident management centre should therefore not be a 'cold capacity' that can be turned on and warmed up when necessary. This cannot be done, particularly because the provisions of the Vbö. stipulate that the provision of tasks applies not only to the period of implementation but also the period of preparation. Accordingly, professional coordination activities cannot be limited to the acute phase of a crisis but must be constantly prepared to protect oneself against it. On the other hand, situation assessment and analysis as a function presupposes continuous operation, since the security environment must be assessed and analysed without interruption and the decision-maker must be kept informed. It is precisely on the basis of these data that the crisis management machinery can be alerted if the analysis of data indicate that a crisis threatens the country.

Taking all this into account, the functions of the National Incident Command Centre would, in a practical version, be, on the one hand, the areas and activities that are common to all types of crisis. To fulfil these functions, it would be advisable to set up a central base team of recognised crisis management experts with appropriate knowledge and experience of the general planning and organisational principles as well as tasks of crisis management. The core team would form the nucleus of a national crisis management centre, operating on a permanent basis within a permanent, integrated organisational element, and would essentially perform the following functions:

- management (head office managers, division managers);

- operational support (coordination of internal activity, administrative support, operational and logistical support, infocommunications support);
- analysis, evaluation;
- on-call, standby, alarm.

Depending on the nature of the specific crisis, the core team would be complemented by experts with specific expertise from different sectors, disciplines and interveners concerned (activation of expert groups), thus creating a flexible structure that can be adapted to the characteristics of the specific crisis.[600]

In conclusion, it is necessary to draw attention to the fact that in modern crisis management - in addition to the above-mentioned theoretical, legal and organisational aspects and conditions - the key role of infrastructure, including information and IT support, is of paramount importance. It is precisely for that purpose that the Vbö. sets the task of ensuring an infocommunication system capable of securely handling and transmitting NATO, EU and national classified data.[601] It is perhaps not far from the truth to state that this would probably be one of the first priorities in the development of the system. A whole-of-government crisis management mechanism will have to deal with such an extensive amount of data that it simply will not be operational without the proper IT support. However, technical background is only one of the necessary conditions for an efficient flow of information. It also requires a mental shift to a modern information management, or rather knowledge management, mindset. In some way, we need to break away from the very deeply entrenched traditional system of static reports with low relevance and little information value, and create a professional management system of knowledge that meets the requirements of the 21st century.

[600] For more details on crisis management centres, see DSUPIN, Ottó – KÓNYA, József: Válságkezelő központok tevékenysége [Activities of Crisis Management Centers]. In: Dobák, Imre (ed.) General Theory of National Security. László KESZELY. Budapest, Zrínyi Miklós National Defence University, 2017.
[601] Article 69 (3) of the Vbö.

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Fundamental Law of Hungary

Act CXL of 2021 on Defence and the Hungarian Defence Forces

Act XCIII of 2021 on the Coordination of Defence and Security Activities

Act XXIII of 2013 on Emergency Stockpiling of Imported Petroleum and Petroleum Products

Act CXIII of 2011 on National Defence and the Hungarian Defence Forces and on Measures that May Be introduced in Special Legal Regimes

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

Act XL of 2008 on the Supply of Natural Gas

Act LXXX of 2007 on the Right of Asylum

Act LXXXVI of 2007 on Electricity

Act CLIV of 1997 on Health Care

182/2022 (V. 24.) Government Decree on the Duties and Powers of the Members of the Government

337/2022 (IX. 7.) Government Decree on the Defence Administration Office

Government Decree 399/2022 (X. 21.) on the rules related to decision-making and tasking in the context of the NATO Crisis Response System and the application of the National Response System

Government Decision 1352/2022 (VII. 21.) on the Rules of Procedure of the Government

XIV.
General rules of preparing for and operating special legal order - Chapter XIII of the Vbö.

1. Introduction

One of the key innovations of the defence regulatory reform has been the review of the system of special legal order regulations and a complete reform of the related catalogue of measures.

Under this heading, I do not intend to show how the number of special legal periods has been reduced from the earlier six to three, nor how the specific elements of special legal order have been modified, bearing in mind that all these rules are essentially laid down at the level of the Fundamental Law. The current chapter of our volume focuses specifically on the related rules of Act XCIII of 2021 on the Coordination of Defence and Security Activities and on the comparison of the solutions of previously existing legislation on the subject, as well as on the presentation and analysis of the new elements.

2. Consolidating the rules on the catalogue of special measures

The regulatory solution prior to the entry into force of the defence and security reform contained provisions on special legal regime in a fragmented manner at several levels as well as in a divided way in different levels.

The basic framework was laid down in the Special Legal Order section of the Fundamental Law, while the detailed rules, the extraordinary measures that may be taken by decree during a proclaimed or initiated special legal order were laid down in Act CXIII of 2011 on National Defence and the Hungarian Defence Forces and on the Measures that May Be Introduced in Special Legal Regimes (Hvt2011.), furthermore Act CXXVIII of 2011 on Disaster Management and the Amendment of

Certain Related Acts (Kat.). This solution has been in itself contradictory since the Hvt2011. - not even in full accordance with its title - did not contain the measures that could be promulgated for all special legal regimes, only the preventive defence situation, state of emergency, qualified state of emergency, terrorist emergency and unexpected attack were included, while all the rules on emergency situations were included in Kat. [602]

Such a break in regulation seems rather unconceptual and difficult to justify from a professional point of view but it is somewhat explainable if we know the structure of the state and the history of the development of regulation. If it was the legislator's intention to include the necessary measures in the laws related to the sectors responsible for dealing with specific threats, it is difficult to understand why the measures that can be introduced in the event of a terrorist emergency, which is essentially the responsibility of the Ministry of the Interior and the national security services, the Police and the Counter-Terrorism Centre, were included in the Hvt2011. A similar question could be raised in relation to states of emergency, which are most certainly not anational defence type of challenge - although in this case, the rules on the deployment of the Hungarian Defence Forces may also have a prominent role.

A similarly strange regulatory solution was found in Kat. In section 51/A, which contained a provision that could have appeared at the level of the Fundamental Law,[603] as it practically opened up the list of possible measures almost completely, maintaining minimal restrictions, and authorised the Government to deviate from the law in the case of a declared emergency for the prevention of a human epidemic causing mass disease that threatens the safety of life and property, or for the prevention

[602] According to the text of Act CXXVIII of 2011, sections 44-51/A, in force before 1 November 2022.

[603] During the legislative process that rule has been the focus of intense political and professional debates, see SZENTE, Zoltán: The Constitutionality Problems of the Emergency Situation Proclaimed on 11 March 2020; MTA Law Working Papers 2020/9. *https://jog*.tk.hu/mtalwp/a-2020-marcius-11-en-kihirdetett-veszelyhelyzet-alkotmanyossagi-problemai

of the consequences thereof, in order to protect the health and lives of Hungarian citizens. This regulatory solution could even be interpreted as a precursor to the ninth amendment to the Fundamental Law and the Vbö., which takes a similarly flexible approach to guarantee the safety of life, health, persons, property and rights of citizens as well as the stability of national economy, and is a solution already put into practice during the COVID-19 pandemic, along which life itself has shown that a special legal order system of rules that has been in place for decades until it reached its 2021 state is not necessarily suitable for dealing with the challenges of the 21st century.[604]

Summing up the above, we can say that the chapter of the Hvt2011 on special legal order measures is essentially a "makeshift solution" from the point of view of placement. The special legal order system did not really "fit" elsewhere, and there has been no political or professional will to create an independent special legal order law since the change of regime.

In that respect, the Vbö. represents a breakthrough, given that from its entry into force on 1 November 2022, all measures relating to special legal order will be contained in a single law and in a single chapter,[605] regardless of the sector whose main responsibility it is to prepare special legal order measures for the situation in question or the ministry with the greatest burden in dealing with the situation. These two factors do not necessarily coincide, as the Ministry of Defence does not necessarily have the greatest responsibility for a specific legal situation linked to a military threat, as was the case with the COVID-19 pandemic: a significant part of the emergency measures required to deal with the pandemic was aimed at keeping the economy functioning and organising supplies to the population, and not specifically at defence against the virus. Similar

[604] For more on that, see HOFFMAN, István – KÁDÁR, Pál: The Administrative Law Challenges of the Special Legal Order and Crisis Management I., Defence Security Regulatory and Governance Workshop Studies 2021/2, especially pp. 16-26. *Hoffman-Kadar_AkulonlegesjogesrendesavalsagkezeleskozigazgatasijogikihivasaiI.2021_2.pdf (mtak.hu*)

[605] Chapter XIII – General rules for the preparation and operation of the special legal order.

considerations led to the tenth amendment to the Constitution,[606] which allows the Government to take extraordinary measures in the event of an emergency, not only in response to serious events threatening the safety of life and property but also in the event of an armed conflict, war or humanitarian disaster in a neighbouring country.

It is easy to see that the focus of special legal measures is always on the state's self-defence mechanism in the broadest sense,[607] on guaranteeing that the security of life and property of citizens can be maintained and restored even in extreme circumstances, and through this, perhaps most importantly in relation to the requirements of national resilience, on the continued functioning of the state and, as a corollary, on the preservation of our national sovereignty.

2.1. Catalogue of special measures - strictly defined measures versus open-ended regulation

Prior to 2022, the Hungarian special legal order regulation basically followed the German model,[608] formulating the measures that could be imposed in a rather detailed and extensive manner. The legislation in force before 1 November 2022 contained a strict taxonomy for both the Kat. and the Hvt2011, which had specified the measures that could be

[606] The tenth amendment to the Constitution entered into force on 25 May 2021. That amendment allowed Parliament to declare a state of emergency in the event of an armed conflict, war or humanitarian disaster in a neighbouring country and brought forward the application of the ninth amendment.

[607] For more on that see TRÓCSÁNYI, László: Theoretical issues of the special legal order; in: NAGY, Zoltán – HORVÁTH, Attila NAGY (eds.) - Special legal order and its national regulatory models, Mádl Ferenc Intézet, Budapest 2021; pp. 26-36; *MFI-TK04-Kulonleges-jogorder-00_web.pdf (gov.hu)* and KÁDÁR, Pál. Military Law and Military Law Review, 2014/1. p. 6.
http://epa.*oszk.hu/02500/02511/00002/pdf/EPA02511_katonai_jogi_szemle_2014_01_005-046.pdf* and András Jakab-Sabolcs TILL: Introduction to Constitutional Law. Budapest, HVG-Orac, 2014.
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[608] DE NEGRI, Laura: Germany, a textbook case of multi-level crisis management; in: NAGY, Zoltán - HORVÁTH Attila (eds.) - Special legal order and its national regulatory models, Mádl Ferenc Institute, Budapest 2021; pp. 414-432, especially pp. 430-432; *MFI-TK04-Kulonleges-jogorder-00_web.pdf (gov.hu)*

imposed by decree in relation to each special legal order. The advantage of such a list is clarity and the possibility of enforcing legal certainty but it also entails limitations of applicability, which in some unforeseeable cases may be an obstacle to decisions necessary for defence.[609] If, for whatever reason, the list is incomplete or contains outdated provisions,[610] its direct consequence could be a malfunctioning of the self-defence mechanism of state organisation, possibly leading to an inability to take decisions and measures, which could be deliberately induced or exploited.

This approach is broken by the solution of the Vbö. not to include a specific list but define broad groups of topics. From the entry into force of the Ninth Amendment to the Constitution, in all special legal situations, the Government is the body empowered to take extraordinary measures,[611] it may suspend the application of certain laws, deviate from certain legal provisions and take other extraordinary measures by decree.

The thematic groups have been designed to address all possible challenges at stake, with the explicit aim of providing a flexible framework. It was necessary because, based on practical experience of recent years, the legislator has concluded that it is practically impossible to draw up a closed list of measures to address each potential threat covering all activities, given the rapidity with which threats and

[609] A practical example of it was the need to create the lex COVID-19, and essentially all the unplanned amendments to the Fundamental Law, particularly the sixth one, which constituted a terrorist emergency, and the tenth one, which immediately extended the emergency rule.

[610] One such "inherited" provision, which is of little use today, is Section 68 (6) of the Hvt2011. Operators of printing works and other reproduction facilities may be obliged to introduce and maintain stricter security regulations. Obviously, the enforceability of these rules is now questionable, perhaps even pointless in the global network of smartphones, home printers and social networking sites on the Internet.

[611] On the practical reasons for this, see the justification of the ninth amendment to the Fundamental Law or KÁDÁR, Pál: Analysis of the basic concept and possible perspectives of the defence-security regulatory reform system; in: Workshop Studies on Defence-Security Regulation and Governance, 2022/8; *pages* 7-9 *https://hhk.uni-nke.hu/kutatas-es-tudomanyos-elet/kutatomuhelyek/vedelmi-biztonsagi-szabalyozasi-es-kormanyzastani-kutatomuhely/muhelytanulmanyok/2022*

challenges themselves change[612] and new ones emerge, the inability of legislation to keep pace with the pace of technological development, while at the same time the need to ensure that new emergencies can be addressed. This is a challenge not only faced by domestic legislation but also clearly demonstrated by international experience in dealing with COVID-19.[613]

The domestic directing principle introduced by the Vbö. is therefore the following: there can be no legal obstacle to protection, if any means, resources, professional solutions are available in the country, and their use and applicability cannot be hindered by legal provisions within the framework of special legal order. It should be stressed once again that this should be interpreted only in a way that can be linked to a special legal order (following the initiative for its promulgation) and subject to the fulfilment of specific objective conditions (to guarantee the safety of life, health, persons, property and legal security of citizens as well as the stability of national economy), the authorisation cannot be without frames or control, and the absolute prohibitions laid down in the Fundamental Law, subject to international conventions,[614] must be enforced in the necessary restriction of rights.

In a special legal order, the suspension of fundamental rights may only take place if the restriction of fundamental rights is not sufficient to achieve the aim of defence and the prevention, management, elimination and prevention or remedying of the harmful effects of the event giving rise to special legal order cannot be guaranteed by other means. The Government must ensure that these requirements are met or, if the

[612] SZENES, Zoltán: Military Security Today. FINSZTER, Géza – SABJANICS, István (eds).
[613] See in more detail NAGY Zoltán - HORVÁTH NAGY, Attila (ed.) - Special legal order and its national regulatory models, Mádl Ferenc Institute, Budapest 2021; *MFI-TK04-Kulonleges_jogorder_00_web1.pdf (mtak.hu*)
[614] In special legal order, the exercise of fundamental rights may be suspended, with the exception of the fundamental rights laid down in Articles II and III and Article XXVIII(2) to (6) of the Fundamental Law (Article 52(2) of the Fundamental Law).

conditions for the restriction or suspension of a fundamental right are not met, it must lift the restriction.[615]

In line with the above principles, the Regulation provides for the adoption of emergency measures in the following regulatory areas:

a) measures relating to personal freedom and living conditions,

b) measures related to economic and supply security,

c) measures relating to security restrictions and public information affecting communities,

d) measures relating to the functioning of the state and local governments,

e) measures relating to the maintenance or restoration of law and order and public security,

f) measures relating to national defence and mobilisation of the country, and

g) other measures directly related to the prevention, management, termination or remedying of the adverse effects of an event giving rise to a state of war, state of emergency or emergency situation.

If we compare the above thematic groups with the system and the closed catalogue of measures of earlier legislation, we can see that all the measures in force before the ninth amendment of the Fundamental Law[616] can be classified in the above list of themes, and in such a way that the list is not closed, i.e. they can be applied in the future in an adaptive way according to the challenges of the moment.

ad a) Measures relating to personal freedom and living conditions include, inter alia, public education, higher education, adult education,

[615] See Article 81 of the Vbö.

[616] See e.g. the provisions of Article 76 of former Hvt., which refers to an obligation to provide economic and material services, or the provisions of Article 79, which deal with the relevant extraordinary measures related to a preventive defence situation, all of which can be parallelled with a subsection of Article 80 (2) of the Vbö.

vocational training, social care and services, primary care, specialised care, care in correctional institutions, family support services, pension services, health care, childcare, road, rail, water and air transport and related activities, the conditions necessary for their operation, the persons carrying out the activities, related repair capacities and facilities, the products and services ensuring their operation, the measures affecting the field of transport by them, as well as Hungarian citizens' travelling abroad , the entry of foreign citizens, keeping contact and relations with foreign natural persons, legal entities or unincorporated organisations. It also covers the crossing of state borders and their closure for security reasons, persons in certain areas of the country, free movement and residence within the country, staying and assembly in public places, public and private events, visits to and access to public institutions.[617]

ad b) The thematic group of measures related to economic and supply security includes, inter alia, measures such as public finance, domestic financial transactions, lending, crediting, various insurance activities, as well as the regulation of securities distribution or the distribution and holding of foreign exchange and currency. But it also covers the control of financial activities, tax and customs administration, tax rates and exemptions, trade activities and stocks of industrial and agricultural raw materials as well as finished products, furthermore products of importance regarding to the defence and security of Hungary. Similarly, it includes the regulation of electronic communications services, labour management and employment relations, food supply and consumption of certain products, health activities, other services affecting the population, the safe location of assets of national economic and other importance, other vital system elements, certain types of economic activities, as well as partial or full state control of certain economic sectors. This group of measures also includes the possibility of imposing mandatory contractual terms and conditions in connection with certain legal transactions and activities, as well as the possibility of imposing certain contractual

[617] At first glance, the list may seem like an idea, but it was precisely these related areas that needed to be regulated during the COVID-19 pandemic.

obligations. It also includes the imposition of the material, organisational and legal conditions necessary for the provision of public services, as well as the obligations, restrictions and prohibitions necessary for their enforcement, and many other related rules - the list is almost endless.

ad c) The list of possible measures related to security restrictions and public information for communities is also open. They could include measures such as media restrictions and censorship for protection purposes, as already known from previous legislation, suspension or restriction of certain postal and electronic communications services, as well as an obligation to provide or restrict the use of electronic communications and information networks, network elements and other devices, as well as electronic communications terminal equipment and components.

ad d) In the context of measures relating to the operation of the State and local governments, the list cannot be closed. This subsection should also include, in a broad sense, measures relating to the functioning of the State organisation, the coordination or management of public administration by the defence and security administration, the regulation of public procurement, defence and security procurement and other public procurement, providing safe and continuous functioning of public bodies not under the control of the State administration and the Government, as well as extraordinary measures relating to the management of local governments.

ad e) The range of possible measures to preserve or restore law and order, public order and public security is also quite wide. It includes, for example, rules on activities related to chemicals, explosives and pyrotechnic devices, weapons and ammunition, self-defence equipment, robotic, autonomous or remotely controlled mobile devices, dual-use equipment, info-communication equipment and components, security systems, emergency measures related to critical systems and installations. Also with reference to that, it is possible to apply specific rules relating to the performance of State functions in connection with the interests of States, natural persons, legal persons, organisations without legal

personality, which threaten international peace or national security, the response to, prevention or elimination of acts which violate or endanger public order, public security or national security.

ad f) All measures aimed at the operational preparation and military defence of parts or all of the country, the preparation of the population for combat operations and the provisions concerning the specific rules of conduct to be observed, shall be included in a thematic group of measures relating to national defence and mobilisation. Likewise included are the provisions concerning the protection of property from damage by hostilities, extraordinary rules for the communication and exchange of information, news and data relating to the military defence of the country and military activities affecting the territory of the country, the enhancement of defence capabilities and activities, the enhancement of civil defence capabilities and activities, or defence and security activities coordinated with allied or cooperating states for defence and security purposes, which are necessary for Hungary's own defence or for the fulfilment of its allied obligations.

ad g) In addition to the above, the legislator shall provide the Government with the possibility to take other necessary measures related to the prevention, management, termination or recovering from the harmful effects of an event that triggers a state of war, state of emergency or state of danger. The table below shows the relationship between the special legal order options in force before the entry into force of the Vbö. and those in force at the time of publication of this volume.

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Kat. Article 47 paragraph (1) In a state of danger it is allowed to determine rules deviating from provisions of public finance.	Art. 80 paragraph (2) d) regulatory matters relating to the operation of the State and local governments	In the emergency declared in spring 2020, special rules were established to deal with the pandemic, some of them different from those in the Public Finance Act. In order to mitigate the economic impact of the pandemic, it was necessary to adopt different rules for credit and loan contracts, financial leasing contracts, corporate taxation, special tax, tax liability, tax and contribution relief, operation of financial institutions, etc., without which the effectiveness of crisis management could not have been ensured.

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Kat. Section 47 paragraph (2) In an emergency situation, the Mayor and the notary may also establish by decree a public administrative task falling within the competence of the Mayor and the notary.	Article 80 (2) paragraph d) regulatory matters relating to the operation of the State and local government	Within the framework of the Fundamental Law, the provision of the Vbö. covers all actors and all possible measures of public administration, making the possibility of intervention more flexible and operational. It is not possible to determine in advance and in an exclusive manner where, in a specific legal order, intervention will be required in the field of public administration's activities, how tasks will be divided among various bodies, and what different rules will be required for crisis management.

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Kat. Article 47 paragraph (3) In an emergency situation, provisions other than those of the Act on Administrative Procedure may be introduced by decree. (a) the scope of decisions of public authorities that cannot be challenged in court, b) the determination of jurisdiction and competence, (c) the procedure for designating the competent administrative authority, (d) the rules of request, e) the administrative and other deadlines, f) the rules of representation, (g) the rule of presentation, (h) the suspension of the proceedings, i) the procedure for appeals, j) the rules of enforcement concerning.	Article 80 paragraph (2) d) regulatory matters relating to the operation of the state and local government (g) other activities not covered by points (a) to (f) directly related to the prevention, management, liquidation, prevention or remedying of the adverse effects of an incident giving rise to a state of war, state of emergency or emergency situation on	A flexible wording has been introduced based on the experience of the coronavirus control. The Kat. has not laid down rules for derogation, e.g. in relation to public procurement rules although it is likely to be necessary in a special legal regime.

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Kat. Article 47 paragraph (4) The Minister responsible for disaster prevention may, by order, impose a contractual obligation on persons engaged in economic activities who are obliged to provide services in order to ensure production, supply and service obligations. The scope of the products and services subject to the obligation to conclude contracts shall be determined by decree.	Article 80 paragraph (2) b) regulatory matters relating to economic and supply security	
Kat. Article 48 paragraph (1) In the event of an imminent threat of aggravation of an emergency situation, the operation of an economic entity may be subject to supervision by the Hungarian State in accordance with the provisions of paragraph (3).	Art. 80 paragraph (2) b) regulatory matters relating to economic and supply security	The placing of an economic entity under state supervision may be ordered pursuant to Article 24 (2) a) of the Vbö., Article 34 (1) to (2) in a special legal regime or following the initiation of the declaration of a state of war or state of emergency.

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Kat. Article 49 paragraph (1) In an emergency situation, the traffic of road, rail, water and air vehicles may be restricted for a specified period of the day or to a specified area (route), or temporarily prohibited in the whole or a specified part of the country. The restriction or prohibition of aircraft traffic shall be subject to the provisions of the Act on Air Traffic and the legislation on the use of Hungarian airspace. Article 49 paragraph (7) In the event of an emergency, the use or restriction of the use of repair capacities, stations, ports, airports, warehouses may be ordered in order to ensure the transport of goods by rail, road, water and air.	Article 80 paragraph (2) a) personal freedom and living conditions and e) in connection with the maintenance or restoration of law and order, public order and public security on regulatory issues	

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Kat. Article 49 paragraph (2) In case of danger, the public may be restricted in the streets or other public places. The restriction and its duration shall be made known to the public by radio, television, press and notices, as well as by the usual local means. Article 49 paragraph (3) In case of danger, the police may be ordered to prohibit the holding of an event or public meeting in a public place if the interests of protection are affected.	Article 80 paragraph (2) a) personal freedom and living conditions and e) in connection with the maintenance or restoration of law and order, public order and public security on regulatory issues	
Kat. Article49 paragraph (4) In a state of danger it may be ordered that the population of a specified territory of the country is obliged to leave that territory (henceforth deportation), and a new place of residence may be simulateneously designated.	Section 80 paragraph (2) a) personal freedom and living conditions c) related to security restrictions and public information affecting communities, e) in matters relating to the maintenance or restoration of law and order, public order and public security	A general empowering framework for regulating free movement and residence within the country has been introduced in the Vbö., which provides for a broader range of measures for defence purposes.

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Kat. Section 49 paragraph (6) May be ordered in case of emergency: *a)* entry, restriction or authorisation to enter, stay or reside in a specific territory of the country, *(b)* that entry to, transit through or exit from specific areas of the country is subject to authorisation, *(c)* that exit from the specified territory of the country is only allowed after the exemption.	Section 80 paragraph (2) a) personal freedom and living conditions c) related to security restrictions and public information affecting communities, e) in matters relating to the maintenance or restoration of law and order, public order and public security	
Kat. Section 49 paragraph (8) In case of emergency, the consumption, sale and storage of alcoholic beverages may be prohibited at the site of the protection works.	Section 80 paragraph (2) a) personal freedom and living conditions c) related to security restrictions and public information affecting communities, e) in matters relating to the maintenance or restoration of law and order, public order and public security	General authorisation frameworks have been established, with several titles available depending on the actual specific action.

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Kat. Article 50 paragraph (1) The movement of assets and property significant for national economy or under some other consideration may be ordered for the sake of securing them (evacuation).	Section 80 paragraph (2) a) related to personal freedom and living conditions, c) related to security restrictions and public information affecting communities, (e) relating to the maintenance or restoration of law and order, public order or public security, in	General authorisation frameworks have been established, with several titles available depending on the actual specific action.
Kat. Section 51 paragraph (1) In an emergency, the provision of temporary civil defence services may be ordered.	Section 80 paragraph (2) a) related to personal freedom and living conditions, c) related to security restrictions and public information affecting communities, e) in matters relating to the maintenance or restoration of law and order, public order and public security	Article 8 of the Vbö. contains the basic rules of civil defence obligations.
Kat. Section 51 paragraph (2) In an emergency situation, any vehicle, technical equipment and earth-moving machinery suitable for rescue may be ordered to be used for the purpose of saving life and property.	Section 80 paragraph (2) e) in matters relating to the maintenance or restoration of law and order, public order and public security	General authorisation frameworks have been established.

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Kat. section 51 paragraph (3) To the extent necessary to eliminate the emergency, the occupation of the real estate or the partial or complete demolition of the building may be ordered, with compensation, if it is absolutely necessary to eliminate the danger or to prevent further danger.	Section 80 paragraph (2) a) related to personal freedom and living conditions, b) related to economic and supply security, c) related to security restrictions and public information affecting communities, d) in connection with the operation of state and local government, e) in matters relating to the maintenance or restoration of law and order, public order and public security	The rules on the temporary occupation of immovable property are laid down in Article 24 (1) and Articles 29-31 of the Vbö., they do not constitute an emergency measure, and may be ordered subsequent to ordering a coordinated defence action. Real estate can also be used in the context of economic and material services [Article 51 (3)]. Any additional restrictions are only possible in a specific legal order with reference to one of the legal titles indicated in the previous column.

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Kat. section 51 paragraph (4) In an emergency, the following may be determined by individual decision a) the Minister responsible for education shall be responsible for the operation and management of public education institutions and the organisation of the school year, b) the Minister responsible for vocational education and training, the operation and management of vocational education and training institutions, the organisation of the academic year related tasks. The Minister responsible for education or the Minister responsible for vocational training may order immediate implementation of the decision. The decision may also be notified by means of telecommunication.	Section 80 paragraph (2) c) related to security restrictions and public information affecting communities, d) in matters relating to the operation of the state and local government	

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Kat. Article 51/A paragraph (1) The Government shall, in the event of a declared state of emergency for the prevention of a human pandemic causing mass disease threatening the safety of life and property, or for the prevention of the consequences thereof, and for the protection of the health and life of Hungarian citizens, in accordance with Articles 21-24, in addition to the extraordinary measures and rules laid down in Chapters 21 to 21, it may, by decree, suspend the application of certain laws, derogate from legal provisions and take other extraordinary measures in order to guarantee the safety of the life, health, person, property and legal security of citizens and the stability of the national economy.	Section 80 paragraph (2) (g) other matters not covered by points (a) to (f) directly related to the prevention, management, liquidation, prevention or remedying of the adverse effects of an incident giving rise to a state of war, state of emergency or emergency situation	The wording of Article 51/A of the Kat. as of 18 June 2020 has been incorporated into the Disaster Management Act due to the COVID-19 experience, so that the Government's scope for epidemic control is sufficiently broad in the event of a human pandemic that poses a mass threat to human life. The new regulation will make these measures generally applicable.

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Different measures concerning the defence administration under Chapter 43 of the Defence Act 2011	Section 80 paragraph (2) a) related to personal freedom and living conditions, c) related to security restrictions and public information affecting communities, d) in connection with the operation of state and local government, (f) in matters relating to national defence and mobilisation	

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Derogations relating to public administration, public order and public security under Chapter 44 of the Public Provisions Act 2011	Section 80 paragraph (2) c) related to security restrictions and public information affecting communities, d) in connection with the operation of state and local government, (e) relating to the maintenance or restoration of law and order, public order or public security, (g) other matters not covered by points (a) to (f) directly related to the prevention, management, liquidation, prevention or remedying of the adverse effects of an incident giving rise to a state of war, state of emergency or emergency situation	

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Extraordinary measures relating to the administration of justice under Chapter 45 of the Act of 2011	Section 80 paragraph (2) a) related to personal freedom and living conditions, d) in connection with the operation of state and local government, (e) relating to the maintenance or restoration of law and order, public order or public security, (f) in matters relating to national defence and mobilisation	
Exceptional measures relating to the economic and material service obligation under Chapter 46 of the Public Act 2011	Section 80 paragraph (2) b) related to economic and supply security, (f) in matters relating to national defence and mobilisation	

Special legal measures under the Kat. in force until 31 October 2022 and the Hvt2011.	**Special legal instrument under the Vbö.**	**Comment**
Regulations and measures relating to the introduction of a preventive defence situation under Chapter 47 of the Act of 2011	Section 80 paragraph (2) (g) other matters not covered by points (a) to (f) directly related to the prevention, management, liquidation, prevention or remedying of the adverse effects of an incident giving rise to a state of war, state of emergency or emergency situation	After the entry into force of the Ninth Amendment to the Fundamental Law, the preventive defence situation is no longer included in the list of special legal order situations, its role is partly taken over by the legal institution of coordinated defence action under Article 74 of the Constitution, the legal institution of defence crisis situation under Article 107 of Act CXL of 2021 (Act on Defence of and the Hungarian Defence Forces), and partly by the state of war and the period of its initiation.

The change in approach described above - the use of broad subject groups rather than individual closed lists - has eliminated the recurring codification challenge of the legislator seeking *ad hoc* solutions to each unexpected challenge, which has led to an increasingly expanded and detailed regulation, disrupting the professional logic of legislation.[618] With the commencement of the Vbö., the catalogue of measures no longer risks becoming a catalogue of ideas - although at the same time the enforcement of the guarantee criteria will become somewhat more difficult, since each measure will have to be subject to an individual assessment of proportionality and necessity. However, this is much less of a threat to the effectiveness of defence and, ultimately, to the survival of the country than incomplete and closed regulation, and it is therefore preferable to take this on board, bearing in mind that the possibility of legal remedy must not be restricted and that guarantee elements must be enforceable.

2.2. Catalogue of special measures - staggered versus full toolbox

Prior to the commencement of the ninth amendment to the Constitution, the legislator had laid down a degree of gradualism in the exceptional measures that could be taken when a special legal order was promulgated. It means that not all measures could be taken in all periods of special legal order. It was the Hvt2011 and the Kat. itself that determined which provisions of the six different special legal orders could be applied and which could not. This kind of staggering is described in section 64 of the Hvt2011.[619] and in sections . 47-51/A of the Kat.

[618] Examples are the repeated clarifications of the Health Act required by the COVID-19 pandemic and the related special legal orders.

[619] Hvt. Article 64 (2) The Defence Council may introduce the extraordinary measures specified in Articles 65-79 during a state of emergency.
(3) In a state of emergency, the President of the Republic may introduce the extraordinary measures provided for in Article 65 (2) and (3), Article 66, Article 67 (2), Articles 68 to 71, Article 72 (1) to (4), Articles 73 to 75, Article 76 (2) and (5), Article 77, Article 78 (2) to (5) and Article 79.
(4) The Government shall introduce

This practice is deliberately broken with in the Vbö. being that it does not contain any restrictions on the gradualness with which measures can be introduced.

The new approach is underpinned not only by common sense but also by practical experience of the pandemic emergency. In the face of what started out as a basically health emergency, the emergency response register was not sufficient, as it was precisely the additional and supporting provisions that were needed, primarily to ensure the sustainability of the functioning of national economy, which were not previously allowed under the relevant rules of the Kat. In view of that, it was necessary to amend the Kat. even before the commencement of the Vbö.,[620] and Act XII of 2020 on the Protection against the Coronavirus also contained rules that reinforced this approach, and the Vbö., repealing the relevant provisions of the amended Kat.,[621] establishes the measures to be general and applicable to all special legal regimes.

For security threats that are changing very rapidly, we can only guess at what measures may be needed but it is clearly not possible to regulate gradualism in advance, and each case will need to be subject to a separate assessment. An example is an emergency situation which, by its very nature, does not by definition require restrictions on the operation of

a) in the event of a preventive defence situation and unexpected attack, the extraordinary measures specified in Articles 65-66, 67(1), 68(4) to (5), 69-70, 72, 76(2), 78(2) to (5) and 79,
b) prior to the declaration of a state of preventive protection, and following its initiation, measures specified in Article 79, without affecting the essential content of fundamental rights,
c) following the initiation of the declaration of a terrorist emergency, measures pursuant to Article 69 (1), Article 70 (4) to (6) and Article 79, with the exception of points a), b), e), i) and j) of Article 79, without affecting the essential content of fundamental rights,
d) in the event of a terrorist threat, in addition to the measures specified in point c), the measures specified in points (a) to (e) of paragraph (2) of Article 65 and in point (b) of paragraph (3) of Article 70.

[620] Act LVIII of 2020 on Temporary Rules in Connection with the Termination of Emergency State and Rules on Epidemic Preparedness section 353.

[621] With effect from 1 November 2022.

media or internet service providers but the possibility of a situation[622] where it becomes necessary cannot be excluded, and therefore the legal possibility must be provided.

However, a strict list of graduated measures, which does not appear in the codification, does not imply an immediate, total and all-encompassing right of action without limits. The Vbö. also lays down the principle of proportionality and gradualism,[623] which is explicitly repeated as a specific provision in the special legal order chapter,[624] emphasising the requirement of purpose limitation, according to which measures may only be taken to prevent, deal with or eliminate the triggering event and prevent or eliminate its harmful effects.

2.3. Catalogue of special measures - measures applicable before and after declaration

The next new element of an analysis of the catalogue of special legal order measures is that while the previous legislation, with few exceptions, provided for the possibility of extraordinary measures from the moment of the proclamation of a special legal order, the Ninth Amendment to the Fundamental Law and the provisions of the Vbö. entitles the Government to take those measures from the very start of the initiation of a special legal order.

The pre-Vbö. legislation allowed for the adoption of exceptional measures during the period for the initiation of a terrorist threat and the initiation of a pre-emptive security situation.[625] The legislator's intention was to allow certain protection decisions to be taken without delay but the earlier period only provided this authorisation in these two situations,

[622] If, in the event of a nuclear disaster, demagogic and dangerous content of the kind that directly hampers the response or creates panic were to appear on social media, even if there is a criminal law instrument to deter such acts, this alone cannot ensure the effectiveness of immediate response measures. In such cases, the service provider may be obliged to disclose certain official content or to block the operation of certain users, if the effectiveness of defence cannot be ensured by other means.
[623] Vbö. section 4.
[624] Article 80 paragraph (3).
[625] See the provisions of Article 64(4)(b) and (c) of the Act.

without assuming that a similar authorisation would be necessary in the period of initiation of a state of emergency or a state of emergency.

The Vbö. made the principle of *periculum in mora*[626] general in the context of all special legal orders. The reason for this is that it is impractical to maintain a legal regime which makes the commencement of the defence dependent on a public act from another body in a situation where the passage of time is of decisive importance for the effectiveness of defence. This "anticipated power" of the Government is the power to prevent the occurrence of a state of war, state of emergency or emergency situation, to the extent necessary and proportionate to the objective to be achieved, namely preventing, managing, responding to as well as recovering from all hazards.[627]

This legal-technical approach is not unprecedented in previous domestic constitutional legislation. Already in the situation under Article 19/E of the Constitution[628] it was possible to take certain measures in view of the short time available. That rule has been taken over by the Fundamental Law with the creation of the offence of unexpected attack.[629] In these cases, although a decision at government level is required, it merely concerns the determination of the existence of an unexpected attack, the

[626] Delay is dangerous.
[627] Article 80 paragraph (4).
[628] Constitution Article 19/E. (1) In the event of an unexpected invasion of the territory of Hungary by foreign armed groups, the Government shall take immediate action to avert the attack or to protect the territory of the country with the air defence and air defence forces of the country and of the allies, to protect the constitutional order, the security of life and property, public order and public safety, in accordance with the defence plan approved by the President of the Republic, with forces commensurate with the attack and prepared for it, until the decision to declare a state of emergency or a state of emergency.
[629] Fundamental Law 52. (1) In the event of an unexpected incursion into the territory of Hungary by external armed groups, the Government shall take immediate action with forces commensurate with the attack and prepared for it, in order to avert the attack, to protect the territory of Hungary with national and allied air defence and air defence forces, to protect law and order, the safety of life and property, public order and public security, if necessary in accordance with the armed defence plan approved by the President of the Republic, until the decision to declare a state of emergency or a state of war. (Text in force before the ninth amendment of the Fundamental Law)

extraordinary measure itself being already well established and approved in advance in an armed defence plan, which is, however, not approved by the Government but by the President of the Republic. Following the ninth amendment to the Fundamental Law, the concept of an unforeseen attack no longer requires constitutional regulation and is now included in the Civil Code,[630] but the logic of operation remains essentially the same, except that, in the light of the provisions of the amended Fundamental Law, the President of the Republic is no longer the approver of the armed defence plan but the Prime Minister.[631]

In relation to measures taken after the initiation of the proclamation of a special legal order but still before its proclamation, it is also important to stress that, if Parliament does not decide on the proclamation, they may remain in force for a maximum of 60 days.[632] However, if the Parliament decides that the proclamation of special legal order is not necessary, the legal effects of the measures taken until then should be examined and their consequences as well as the restoration of normal functioning should be provided for by law.[633]

The latter provision is of particular importance, since during the period of a special legal order, measures completely alien to peacetime processes may be built into the daily routine, the professional and legal consequences of which will not disappear immediately once the special

[630] Act CXL of 2021, Article 108 (1) In the event of an unexpected attack, the Government shall take immediate action with forces commensurate with the attack and prepared for it, in order to avert the attack, to protect the territory of Hungary, to protect law and order, the safety of life and property, public order and public security, in accordance with the armed defence plan of the country, even before the initiation of the declaration of a state of emergency or a state of war.
[631] Act CXL of 2021, section 10 (2) The armed defence plan of the country shall be approved by the Prime Minister on the basis of a proposal by the Minister responsible for defence.
[632] Article 54 (3) of the Fundamental Law.
[633] Article 54 (4) of the Fundamental Law.

legal order has been terminated, and the future of these processes will have to be sorted out.[634]

3. Special provisions for special legal preparation

The cases discussed above relate specifically to the special legal order already promulgated or initiated by the Government. In addition, in order to ensure the effectiveness of defence, the Vbö. provides the Government with the possibility to order an increased readiness of defence and security organisations, the defence and security administration, government administrative bodies designated by law to perform the tasks of a special legal order, and order the immediate execution of extraordinary work to the extent necessary, even before the start of the government meeting to initiate the declaration of a state of war or state of emergency or the declaration of a state of danger. This rule will make the already flexible basic legislation even more operational, if possible, and will also ensure that the departments and staff concerned are directly prepared. Of course, subject to the need to apply the appropriate extension logic, this is not a matter of contingency, either: some event must have occurred or some threat must be identifiable at this time, and the emergency rule for these bodies cannot be a means of regulating day-to-day operations - normal periodic general rules are available for that purpose.

4. Summary

As a consequence of the ninth amendment to the Fundamental Law, the special legal order system has not only been renewed in form but has also taken a significantly different approach in its logic, flexibility and depth

[634] This is done by so-called "exit laws" (some temporary emergency provisions are driven out of force, however, some of them are subsequently incorporated in some acts and legislation). Again, as an example, the emergency declared in the context of COVID-19, where certain customer service and public authority activities were restricted due to the effects of the epidemic, resulted in a number of public authority licences being extended beyond the legal deadline. The lifting of the emergency would have left these activities without legal basis with immediate effect if no specific legislation had been adopted.

of intervention. Recent events have proven time and again that in our rapidly changing world, special legal order systems can only be applied with sufficient effectiveness if the legal and professional construction is up to the challenges, and allows for intervention at least as fast and varied as challenges arise and change. However, the specific catalogue of legal measures cannot be used without a response, the test of necessity and proportionality must always be applied and, where other, less 'drastic' means are available for dealing with the situation, those should be used.

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Fundamental Law of Hungary

Ninth Amendment to the Fundamental Law of Hungary

Tenth Amendment to the Fundamental Law of Hungary

Act XX of 1949 on the Constitution of the Hungarian Republic

Act CXXIII of 2011 on National Defence and the Hungarian Defence Forces, as well as on Measures Applicable in a State of Emergency

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

Act XII of 2020 on the Protection against the Coronavirus

Act LVIII of 2020 on Transitional Provisions Related to the Cessation of the State of Emergency and on Epidemiological Preparedness

Act XCIII of 2021 on the Coordination of Defense and Security Activities

Act CXL of 2021 on National Defence and the Hungarian Defence Forces

XV.
Outlook - national resilience in relation to NATO and the European Union

1. Introduction

The history of Europe is largely a story of princes, kings and emperors fighting each other and then conquering much of the world. No other place in the world has seen more wars than Europe. The First and Second World War left such horrific memories for our societies that they have prompted the continent to make a major effort to develop regulated forms of competition between nations other than war. The relations of the countries of the European Union are governed by law and their security is guaranteed through a system of concertation, so that they do not pose a threat to each other.

Their protection against external armed threats is essentially guaranteed by NATO, with the United States of America providing the dominant military force. However, over the past decade, NATO allies and the EU have had to come to a number of realisations that have had a fundamental impact on security and have made it urgent to strengthen their defence.

The post-Cold War joy has eclipsed the knowledge of basic laws, and the importance of the balance of power has had to be reawakened. Moreover, the priority of the United States has been increasingly Asia, where the future of world development is decided rather than in Europe. That is not to say that Europe cannot rely on NATO and thus on the US presence - as the Russo-Ukrainian war is showing - but there is now no doubt that comprehensive security and defence developments are needed. There are many reasons for that: most notably, the fact that the Allies and the vast majority of European countries have significantly reduced their defence forces after the Cold War, having concentrated for some two decades on crisis management far from their borders; and ultimately, the return of inter-state warfare, in the form of hybrid warfare, to Europe. We face

both an all-out war between states (Russia-Ukraine war), military and non-military (e.g. economic, energy, IT, diplomatic), and a combination of covert and overt means (disinformation, spreading fake news, use of irregular and terrorist groups).

With the expansion of hybrid warfare, the boundaries between war and peace are blurred, so societies and states can also be destabilised without an armed conflict. As a consequence, NATO allies and EU Member States must make increasing efforts to develop their political, governance, economic and social resilience. These developments in turn imply legal and regulatory, structural, operational, and cultural dimensions - ultimately in the interest of preserving the Allies' and Europe's leadership. A decisive step in that process in Hungary was the adoption of Act XCIII of 2021, the first legislation to deal with the coordination of security and defence issues at the legislative level, which is a prerequisite for effective resilience.

Nowadays, an integral part of NATO's defence and deterrence policy is to enhance resilience in order to divert an adversary from his offensive intentions by convincing them that they cannot achieve their objective. The purpose of this paper is to briefly illustrate how resilience has become a rallying cry and contribute to a better understanding of related domestic efforts. It will also point out that resilience is a crucial national responsibility but that effective national resilience can only be achieved within NATO and the EU. The cohesion of allied nations, NATO's deterrence, the delivery of its core tasks and its cooperation with the EU are of paramount importance for the resilience of the Western world.

2. The emergence of resilience as a key concept

Resilience in a general sense, refers to the ability to recover from a shock, trauma, disaster but has different meanings and technological as well as procedural content from one field to another. It has received special attention in different periods in different disciplines. For example, psychology and ecology had already paid considerable attention to

resilience as early as in the 1970s, the former focusing on the resilience of children and the latter on the maintenance of natural systems. In the fields of social sciences and human ecology, the concept became more prominent by the 1980s, with efforts to promote community resilience, analysing the understanding of dynamic interactions between environmental and personal factors. Resilience received increasing attention in the 1990s as the rise of social disharmony became a trend - most notably due to the end of the Cold War, the exacerbation of environmental stress and urbanisation. That has of course had an impact on international development in weak or failing states, as the UN Rio de Janeiro report points out. However, for the developed, western world, it is the 2000s that have been the real turning point.

In the United States of America, critical infrastructure and counter-terrorism protection after the terrorist attacks of 11 September 2001, and then in 2005 after Hurricane Katrina, which caused severe damage, resilience came to the fore as a result of climate change as well as changes triggered by local societies. The European Union has also started to pay particular attention to the protection and resilience of critical infrastructure following the terrorist attacks in the US but especially those in Madrid (2004) and London (2005). A few years later, the financial and then economic crisis (2008) had a similar impact on the sectors concerned. Attention has increasingly turned from the resilience of individual sectors (e.g. tourism, finance, logistics) to the resilience of social subsystems (e.g. economic, political) and then of entire societies.

Of particular interest in that respect was the process known as the Arab Spring (2010-2012), during which social discontent led to a shock effect that shook both state institutions and the political establishment. However, the resilience of individual states varied considerably. Related research has shown that shocks can have external or internal causes, and can also be artificially induced as part of a hybrid attack, leading to the deterioration and eventual collapse of one or more elements necessary for stability. The weakness of any one of these elements can lead to the

erosion of another element, its subsequent failure and the collapse of the political settlement.

In terms of rethinking defence and deterrence, the Russian annexation of Crimea (2014) has become a defining moment for NATO and the European Union. It was practically the first event in which the borders of a European country were changed, not through classical warfare but by using military force, by intimidating both the civilian population and local authorities, and by circumventing international law. The then seemingly successful implementation of hybrid warfare in practice marked the beginning of a new era. In the same year, support for Russian separatism in eastern Ukraine (by political, military, economic and communications means) and the subsequent perpetuation of the area as a frozen conflict confirmed that. Russia's action against Ukraine triggered closer cooperation between NATO and the European Union and a fundamental change in the way these organisations think about defence. That was clearly articulated at the 2014 NATO Summit in Wales.

The summit's final declaration underlines that the Russian aggression against Ukraine has changed NATO's approach to European security. NATO's forthcoming Foreign Ministers' meeting (2015), attended by the EU High Representative for Foreign Affairs and Security Policy, set out a strategy for defence against hybrid warfare and closer cooperation with the EU and partners. As regards the future development of cooperation, resilience is presented as an area for development requiring complementary action by NATO, the EU and their partners.

The "triumph" of the concept of resilience was completed in 2016 in both the EU and NATO narratives. The European Union's Global Strategy for Foreign and Security Policy emphasised the resilience of states and societies within Europe and in the neighbourhood, and the fact that the development and deployment of civilian-only instruments is increasingly inadequate to the realities of a changing world. Resilience also emerged as a key concept in the final declaration of the NATO Heads of State and Government North Atlantic Council in Warsaw.

In the midst of the initial steps to strengthen European resilience, the COVID-19 pandemic was a shock to the world that brought new dimensions to the importance of resilience. The pandemic accelerated a number of international processes that had already begun. These include, first and foremost, global economic and strategic realignment; rivalries between political regimes; restrictions on democratic freedoms; and technological developments. The pandemic has made it clear that we are living in a period of transnational threats that do not respect borders and of great power rivalry, and that these two phenomena are reinforcing each other.

Dealing with the spread of the COVID-19 virus would clearly have required international cooperation from the start but in the context of strategic rivalry, it has resulted in unilateral reactions, above all from China and the United States. The Chinese leadership have focused on maintaining central power and strengthening their international position in this unexpected situation. The US leadership, on the other hand, focused on competing with China at the expense of international, even alliance, cooperation. The UN World Health Organization became the arena for US-China rivalry at the very time when international cooperation was most needed.

The rapidly changing international environment at the outbreak of the pandemic also placed significant strains on the operations of NATO allies. The response of the Allied countries to the health shock arrived first at national level, and then an undoubted need for international cooperation led to continuous and increasingly complex coordination. In each case, national efforts to deal with the pandemic also meant a rapid deployment of security and defence organisations, including almost immediately the armed forces. The complex international and national civil-military coordination has greatly contributed to the recognition of the importance of resilience and resistance. As the pandemic was managed, it became increasingly clear that international order, security and defence had fundamentally new characteristics. This new situation

required significant and rapid adaptation by NATO allies and the European Union, both at strategic and operational level.

The pandemic has shown that the world has changed significantly through globalisation:

- countries and companies are much more interdependent and therefore more vulnerable in many respects (e.g. supply chains);
- technological progress has opened up completely new dimensions in the fields of politics, public administration, public services, economy and warfare (e.g. artificial intelligence);
- a totally new type of resilience very different from the pre-Cold War needs to be developed today because of cross-border risks, interdependence and decentralisation of systems within countries (e.g. the role of the private sector).

In the period since the pandemic outbreak, we have read and heard about resilience in many NATO-related contexts. What there is a consensus in principle is that resilience is multisectoral (political, economic, defence-related, etc.) and that it is linked to several concepts which to some extent form part of it. These include, in particular, resistance, recovery, adaptation and transformation.

3. NATO, European Union, Resilience

The Final Declaration of the 2016 NATO Warsaw Summit states that *"Resilience is an indispensable basis for credible deterrence and defence and for the effective performance of the Alliance's core tasks."* It also points out that there are three key tasks at stake: ensuring continuity of governance, providing essential services to the population, and ensuring continued civilian support to national and NATO military forces. Resilience therefore requires a broad, cross-cutting effort involving government (ministries), the armed forces, the economy (state and market actors), citizens, civil society and international organisations.

It is clear that domestic legal, regulatory and organisational processes are in line with that complexity and international thinking. Joint action, situation assessment, training and practice coordinated at national and international level are needed. Coordinated whole-of-government action is essential, as the threats and challenges are very diverse and no single ministry can address them by oneself. The solidarity of society in the field of defence involves both various forms of participation in physical protection, training and raising awareness, as new technologies are misinforming the population of countries with unprecedented effectiveness. Economic actors, and therefore the private sector, are also key players in the provision of critical infrastructure and essential services. The latter is also worthy of attention because the outsourcing trends of recent decades have made the operation of armed forces largely dependent on market and civil actors.

In many areas, key civilian resources and infrastructure critical for defence are owned and operated by the private sector. For example:

- around 90% of the military transport required for major military operations is provided by civilian assets leased or requisitioned from the commercial sector;
- more than 70% of satellite communications used for defence purposes are provided by the commercial sector;
- around 90% of transatlantic internet traffic, including military communications, is carried on submarine fibre-optic cable networks maintained by civilian infrastructure;
- on average, around 75% of the inclusive national support for NATO operations is provided by local commercial infrastructure and services.

The Warsaw Summit was also a milestone for renewed cooperation between NATO and the European Union. A joint declaration was signed by the President of the European Council, the President of the European Commission and the Secretary General of NATO, laying the foundations for a new type of relationship:

"In the light of the common challenges we now face, we need to step up our efforts: because we need new ways of working together and new levels of ambition; because our security is interconnected; because together we can mobilise a wide range of tools to respond to the challenges we face; and because we need to use resources as efficiently as possible. NATO and the European Union are mutually reinforcing. Together they can better ensure security in Europe and beyond."

Seven areas of cooperation, including resilience, were identified in the NATO-EU Strategic Partnership. A second joint declaration was subsequently signed in 2018, calling for rapid progress in four key areas:

- military mobility;
- the fight against terrorism;
- the ability to withstand chemical, biological, radiological and nuclear weapons;
- women, peace and security.

NATO and EU Member States have endorsed the cooperation process and in parallel have identified no fewer than 74 action points, on whose progress they will report regularly. The two institutions have thus taken a significant step forward towards more effective cooperation and thus the development of resilience. Regular political dialogue has taken place, areas of cooperation have been identified and significant progress has been made in the area of operational cooperation (e.g. hybrid threat, cyber security and defence, military mobility).

A new period in NATO's history has also begun as a result of the Russian annexation of Crimea and the destabilisation of the regions of eastern Ukraine. NATO's eastern wing has been militarily strengthened and the Alliance's military leaders decided on the NATO Military Strategy in 2019 for the first time since the Cold War. This new vision set out the Alliance's military-strategic objectives as well as the means and tools to achieve them. As regards the implementation of the strategy, work has started on the development of the Concept for Deterrence and Defence of the Euro-Atlantic Area, which was adopted in 2020, and the NATO

Warfighting Capstone Concept, a vision for the development of military assets, which was made ready by 2021. In the latter, resilience is identified as one of the five development directions for the changing nature of war. It highlighted civil-military cooperation, particularly in the areas of supply routes, communications and influencing societies' thinking.

Accordingly, NATO Allies have a duty to build systems that can absorb disruptive influences and adapt to a changing environment while retaining their essential functions, structure, identity and control mechanisms. Resilience has become such an important issue that it has often been mentioned as a task alongside NATO's core tasks of collective defence, crisis management and cooperative security in the years leading up to the 2022 NATO Summit.

At the strategic and political level, however, the future of NATO has long been the subject of serious debate. This became clear to everyone in the context of the US presidential elections, with the former president (Donald Trump) expressing scepticism about NATO and the new president (Joe Biden), elected in 2020, setting the goal of strengthening transatlantic relations. In parallel, the French president (Emmanuel Macron) has called for the creation of strategic autonomy for Europe. The report "NATO 2030: United for a New Era", which prepared NATO's new Strategic Concept, made a large number of recommendations and included resilience in almost all existing contexts. However, without addressing the fundamental questions of NATO's political adaptation, it is unlikely that any substantial progress could be made on these.

At the NATO summit in Brussels (2021), the Heads of State and Government adopted decisions on the development of NATO (NATO 2030), which gave a new meaning to resilience in both military and political terms. The decisions made clear that resilience:

- is both national and collective responsibility;
- is a prerequisite for deterrence;

- provides a comprehensive framework for NATO's three core tasks.

That is why NATO is striving to take a more integrated and coordinated approach to reducing vulnerability and ensuring that its forces can operate effectively in peace, crisis and conflict. That requires rapid threat anticipation, enhanced combat readiness and a transformation of the decision-making system.

The national targets linked to the seven baseline requirements for NATO resilience, which are also discussed separately in this volume, are the operationalisation of resilience, i.e. they define how the effective implementation of tasks will be measured. The definition and implementation of national objectives and tasks clearly implies whole-of-government processes and operations. In that context (as stated by the Allied Heads of State and Government), NATO expects nations to develop plans for defining, assessing, reviewing and monitoring resilience objectives, which are also in line with EU standards in case of some countries. This means, in practical terms, that the EU's regulatory mechanisms support NATO's resilience objectives.

In addition to the above, monitoring of resilience enhancement is supported by a new four-year Planning and Review Cycle. This will set up a process/institution that provides a framework for alignment and accountability, linked to and similar to the NATO Defence Planning Process (Table 1).

➢ **Phases:** defining requirements; setting targets and developing plans; national and NATO assessments.
➢ **Requirements definition tools:** the seven core requirements of NATO; NATO resilience goals; national resilience goals.
➢ **Assessment tools:** national responses to NATO Defence Planning Questionnaire; NATO Resilience Assessment; Regional Civil Protection Assessment; National Self-Assessment.

Table 1 Elements of the NATO defence planning cycle

Enhancing resilience requires coordination at an international level, a higher level of integration than is currently the case, as security and defence risks and threats, as well as the individual vulnerable systems, are typically not bound by national borders. NATO's military operations also require international mobility and an ability to act. The establishment of the NATO Resilience Committee immediately prior to the NATO Summit in 2022 is a key step in that process.

4. NATO's new Strategic Concept and the issue of resilience

After long preparatory work, thirty Allied countries adopted the new NATO Strategic Concept in Madrid on 29 June 2022. The Strategic Concept defines the security challenges the Alliance faces and outlines its political and military tasks. The current Concept is the fourth since the Cold War but the first to declare that there is no peace in the Euro-Atlantic area and that NATO faces multiple global and interconnected threats. Overall, it therefore records that the security environment is deteriorating.

Two threats are actually named in the document: Russia and terrorism. As regards Russia, it underlines that a Russian attack against the sovereignty and territorial integrity of allied states cannot be ruled out. It also makes it clear that NATO's policy of dialogue and defence towards Russia ("dual track approach") is not preferred following the attack on Ukraine in February 2022. With regard to terrorist groups, it records that they have expanded their networks, strengthened their capabilities and invested in new technologies to increase their effectiveness. Although terrorism has been mentioned, it is not discussed in depth in the document, presumably due to the differing positions of some allies (e.g. Turkey, Spain).

NATO's three main missions, as defined in its 2010 Strategic Concept, are collective defence, crisis management and cooperative security. The first task dominated during the Cold War, and in the 1990s the focus shifted to managing the risks posed by crises outside the Alliance's borders, most notably in the Balkans, the Middle East and North Africa.

Cooperative security, partnership, did not necessarily and primarily focus on military reinforcement but on reducing instability.

In the new Strategic Concept, the continuation of all three tasks seems still necessary but there are significant shifts in emphasis. On the one hand, the designations have somewhat changed, so that today NATO's main tasks are: deterrence and defence; crisis prevention and management; and cooperative security, which remains unchanged. At the same time, the subordination of all tasks to the tasks of deterrence and defence, is a major change i.e. the former crisis management focus has become a thing of the past. NATO, which after the Cold War significantly transformed itself and strengthened its crisis management capabilities in a changing security environment, is now returning to a significant extent to the core mission defined at its inception.

A significant step forward has been taken in terms of deterrence and defence but the approach is fundamentally different from that of the Cold War. On the one hand, the Strategic Concept takes a new approach to the concept by referring to global attention and a 360-degree approach, by capturing "all potential adversaries", "all possibilities for aggression" and by detailing the main aspects of allied defence.

Also new is the reference to the provision of trade shipping routes, which already refers to supply chains of recent years, to territories beyond the Euro-Atlantic region and, more generally, to the preservation of the international institutional framework and rules that had been established subsequent to the Second World War. In other words, the document mentions Russia and terrorism but it interprets NATO's scope of tasks much more broadly and clearly mentions China in the text as an aggressive competitor. The nature of the threats and risks made a narrower interpretation difficult, if not impossible.

Particularly noteworthy from our point of view is point 26 of the Strategic Concept, which includes resilience in the chapter on defence and deterrence, deriving from paragraph 3 of the Washington Treaty, and emphasises:

> "*We will take a more robust, integrated and coherent approach to building national and alliance-level resilience to military and non-military threats and challenges to our security, which is a national responsibility and a collective commitment rooted in Article 3 of the North Atlantic Treaty.*"

Resilience did not, therefore, appear as a fourth core task in the concept - although there were some aspirations for it. However, it was confirmed that building resilience in the Alliance was a priority. Article 3 of the North Atlantic Treaty Organisation's Basic Document states that the Allies shall maintain and develop their defence capabilities. And in the new Strategic Concept, defence capabilities have a much broader meaning than military capabilities alone. The effective fulfilment of NATO's defence tasks depends in a thousand ways on civilian infrastructure, which is vulnerable to terrorist or hybrid attacks.

It should be emphasised that an emergence of non-military elements of hybrid warfare is becoming increasingly important today, making the shock tolerance and rapid restoration of the operational capability of civilian (including state, municipal or business) and military systems a pressing issue of security and defence. That development logically leads to closer cooperation with NATO partners. In that respect, the Strategic Concept also clearly defines and names the EU:

> "*Hybrid operations against allies could rise to the level of an armed attack and could lead the North Atlantic Council to invoke Article 5 of the North Atlantic Treaty. We will continue to support our partners in countering hybrid challenges and seek to maximise synergies with other relevant actors, such as the European Union.*"

The deterioration and increasing complexity of the security environment requires NATO to work more closely with its partners, in particular the European Union, as EU regulatory activity is a major contributor to resilience. Accordingly, in December 2022, the Council of the European

Union adopted a Directive and a Recommendation on enhancing the resilience of critical organisations. [635]

The Directive replaces the one adopted in 2008, because the cross-border nature of operations using critical infrastructure means that protection measures applying only to individual assets are not sufficient to prevent disruptions. It requires Member States to develop a strategy to enhance the resilience of critical organisations, to carry out risk assessments at least every four years and identify critical organisations providing essential services. In addition to the national aspects, rules have also been established to identify critical organisations of high European importance.

The Recommendation focuses on strengthening resilience of critical infrastructures and sets out actions for key sectors (e.g. energy, digital infrastructure, transport and space exploration). It covers three priority areas (preparedness, response and international cooperation) and invites Member States to update their risk assessments, conduct stress tests of relevant entities, with the energy sector as a priority. The Directive calls on EU Member States to prepare a plan for a coordinated response to critical infrastructure incidents of cross-border significance and states that the EU will support partner countries in enhancing their resilience and strengthening cooperation with NATO in this field.

A change in the scale and quality of cooperation between NATO and the EU is necessary, as the size of military forces deployed on NATO's eastern flank has increased almost tenfold, and NATO's new force structure (NATO Force Model) envisages developments to further increase their potential rapidly. In addition, Russia's attack on Ukraine has led to further NATO enlargement - Finland and Sweden, with their neutral traditions, have applied to join NATO. The accession of Finland and Sweden will lead to significant changes in the Alliance.

[635] Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical organisms and repealing Council Directive 2008/114/EC

As expected, following the NATO 2022 Summit, a new NATO-EU declaration was signed to take cooperation to a higher level, to step up cooperation against Russia and China, and support Ukraine. The declaration condemns Russian aggression in the strongest terms, stating that Russia's war undermines the security and stability of Europe and the world and calls for an immediate withdrawal of Russian troops from Ukraine. The statement notes that authoritarian actors are challenging NATO and EU interests.

In the context of increasing strategic competition, Chinese policy poses challenges and also the fragile and unstable situation in Europe has prepared the ground for strategic rivals and terrorist organisations. The declaration reiterates the importance of relations with the US and that NATO is the basis for collective defence in the Euro-Atlantic area. It also reiterates the need for a stronger European role in defence. NATO and the EU are stepping up cooperation in specific areas, including resilience, critical infrastructure protection, emerging disruptive technologies, foreign interference and information manipulation.

One day after the signing of the Declaration (11 January 2023), NATO and the EU announced the creation of a joint working group on resilience and critical infrastructure protection. The aim of the working group is to share assessments, best practices and develop principles for improving resilience. The working group will initially focus on four sectors: energy, transport, digital infrastructure and space exploration. That has brought NATO-EU cooperation to a level never seen in recent years, and particularly since the start of Russia's war of aggression against Ukraine.

5. Summary

Understanding the domestic steps taken to build resilience (resilience) in an international context is of key importance. The obvious explanation is that Hungary is a member of the European Union and an allied state of NATO. Beyond that, however, it should be clear that we are witnessing significant historical changes. Today, in a world becoming bipolar or multipolar, no country, and neither NATO nor the EU, can guarantee its

security and defence on its own. Historically, it is not unprecedented to have a bipolar or multipolar world order but the world has never been so complex, real-time and interconnected.

Changes in the earth's climate, the rapid pace of technological development and the rivalry between political systems know no boundaries. In response to these changes, the theme of developing resilience gradually gained ground in the developed world, and then burst into our lives with Russia's war against Ukraine, the COVID-19 pandemic and China's decisive economic and military rise. It is now clear that the misconception of the post-Cold War quarter century was that Western countries could guarantee their own security far from their borders.

Over the past decade, it has also become clear that a comprehensive redefinition, regulation and coordination of the security and defence sector at national level has become urgent. However, the effectiveness of national developments depends crucially on alignment and coordination with international alliance and partner systems. That is an exceptionally difficult task, as Russia and China aim to change the current rules-based world order favoured by the Western world. This order will certainly change, as the post-World War II systems are becoming increasingly dysfunctional. However, the extent to which the balance of power and thus the rules change is of existential importance for NATO, the EU and Hungary in it.

In our federal system, there are significant differences between countries, with national interests showing significant differences in the focus of resilience development. The physical distance of the allied states from Russia, their economic dependence, their exposure to natural changes (e.g. drought, sea level rise), their technological development, their innovativeness show significant differences. At the same time, the experience accumulated over decades by NATO and the European Union and the adaptive institutional architecture they have built up provide an opportunity for all concerned to work together in a coordinated way to

develop resilience. To successfully adapt to the new circumstances, it is essential to develop and continuously compare national resilience plans, identify lessons learned, identify and share promising practices and develop financing strategies. There is no doubt that the regulation and organisation of Hungarian national resilience has made significant progress in recent years but continuing that work will require persistent understanding of and active participation in the rapidly evolving mechanisms of NATO and the EU.

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XVI.

The impact of the operation of the Defence and Security Management System on certain priority areas of government and on the functioning of defence and security organisations

1. Introduction

As follows from the title of the present chapter, the analysis of Act XCIII of 2021 on the Coordination of Defence and Security Activities (Vbö.) has two different focuses: on the one hand, it covers the functioning of defence and security organisations primarily responsible for implementing the Act, and on the other hand, it also pays attention to the spill-over effects of the functioning of the defence and security administration system, which affects both the government and the more distantly related sectors of broader state organisation, which is also considered as a separate branch of government in the broad sense.

According to the originally adopted text of the Vbö., in the first round of the investigation it substantially amended the former Home Defence Act, to a lesser extent Act CXXVIII of 2011 on Disaster Management and the Amendment of Certain Related Acts (Kat.), and to a minimum level Act XXXIV of 1994 on the Police (Rtv.) and Act CXXV of 1995 on National Security Services (Nbtv.). Considering that the scope of defence and security organisations under Article 5 Point 18. of the Vbö. includes the Hungarian Defence Forces, law enforcement agencies and national security services, supplemented by the Parliamentary Guard, these amendments to the Acts are largely related to the introduction of the new category. The regulatory core has thus been established, where the Vbö. has designated the organisations primarily responsible for the performance of defence and security tasks.

If, however, the scope of the analysis also includes Act VII of 2022 amending certain Acts related to defence, economic development and government administration (hereinafter: Act VII of 2022), and the provisions affected by it and not primarily amended as a result of the

reference to the Act on the Constitutional Court, the scope of further Acts that have gained significance with respect to the implementation of the Act can be identified, too.

There is, however, another group of regulations which, from the point of view of defence and security reform, primarily reflect the need for amendments not defined by Vbö. but which have already arisen as a result of the ninth amendment to the Fundamental Law, and thus fall within a broader interpretation of the regulatory environment, and which include corrections related to the revision of elements of special legal order. This sector is nevertheless linked to the constitutional foundations in that the definition of the legal rules governing special legal order in the context of the implementation of framework conditions of the Fundamental Law, accordingly the Constitutional Court's practice in relation to the rules governing the assessment of the content of special legal order is therefore linked to the specific chapter of Vbö., just as the definition of special legal order specific to financial constitutionality is ultimately the subject of the defence and security framework established by the Constitutional Court.

In this context, the impact of the Vbö. also goes beyond the actual codification activity: in terms of practical impact on the legal system, we must also take a look at the segment of the development of constitutional law that can be classified as judicial legislation. From this point of view, however, we can put aside the debate on the strictness of the determinative role of the Vbö., which has been characterised by the analogies[636] of the umbrella, the tyre and the mortar: we may consider the regulatory approach however deep, being characterised by a total governmental approach, its determinative role is ultimately clearly evident in the case of cardinal laws, despite the partial two-thirds nature of the Act.

For reasons of space, the present chapter cannot undertake an exhaustive exploration of the links between defence and security activities from the

636 Pál KÁDÁR - Péter Szabolcs TILL: Ensuring the coordination of defence and security activities in the light of the Vbö.; VBSZK Workshop Studies 2022/21. *https://tinyurl.com/ycym3ceh* 10-16. vs. András József Balogh - Szabolcs Péter TILL.

point of view of the organisation of the state but only an exemplary presentation of distinguishable levels of this system of links, bearing in mind that we cannot speak of a completed legal development either in the sense of codification or in the sense of judicial application of the law. The chapter will seek to provide examples of the different regulatory categories of the subject matter, indicating that the representation of the areas affected by the development of defence and security reform cannot be separated from the feedback built into the reform process itself.

In the first sub-chapter, we seek to outline the two different regulatory techniques chosen by defence and home affairs legislatures, presenting the main changes in the areas of law directly concerned. We then turn to the segment of defence and security reform where the Vbö. itself has been modified, typically already before its coming into force. As perhaps the most exciting aspect of the broader areas of law affected, we then analyse examples of changes related to the re-enactment of the alert system. To conclude the chapter, before summarising, we will outline examples of the fixing of the doctrinal framework of interpretation of public finance and fundamental rights in general after 1 November 2022, in the light of some first special legal order-related decisions of the Constitutional Court.

2. Direct links to the Vbö.

The existence and scope of the Act on Home Defence is also determined by the Vbö. As several authors have pointed out,[637] the former one, *Act XCIII of 2011 on Defence and the Hungarian Defence Forces and on Measures That May Be Introduced in the Special Legal Order*, as amended according to the original concept of the Vbö, had not been a sustainable regulatory concept, as the definition of the special legal order framework was excluded from the chapters of this Act. That is a regulatory concept change of such scope and importance that it did not

637 BALOGH - TILL im. 5-6. and Pál KÁDÁR: Some issues of the reform of the defence-security regulation beyond the Fundamental Law; VBSZK Workshop Studies 2021/11. *https://tinyurl.com/54spenbn* 9.

allow the adoption of a regulatory technique based on amendments. In that respect, therefore, a fundamental difference in regulatory methodology between military defence and home affairs[638] had been determined. Whereas in the broad sense law enforcement legislation, the regulatory amendment technique proved to be sufficient in the course of several rounds of feedback on the Vbö., in the defence field, the text resulting from rewording became the starting point for subsequent feedback.

It is not the purpose of this chapter to demonstrate the advantages and disadvantages of these two regulatory approaches, as the findings in this respect have already been recorded.[639] In summary, it is worth reiterating that the main advantage of amendment-based technique is the continuity of existing institutions and the fine-tuning of existing operational practices through the "small steps technique" but that the technique is risky in the case of shortcomings in point-by-point amendments.

The advantage of a regulatory solution built on making new law, on the other hand, is that systemic innovations can be more widely enforced. The challenge of this solution is, however, the possibility of subsequently questioning regulatory elements that had previously seemed to be evident and therefore recommended to be maintained: *business as usual* systemic practices cannot be applied at all in such an environment.

Looking back at the first two regulatory years of defence and security reform (2021-2022), it can be concluded that, irrespective of the choice of regulatory concept, both solutions led to several recurrent corrections, which, beyond the interim evolution of the concept, can be attributed to

638 In this chapter, the terminology "home affairs" is used in the pre-law enforcement sense of the government structure that will be in place in spring 2022, including national security, but excluding health and education, which were under the Ministry of Human Resources at the time. The latter are not defence and security organisations, but they are involved in certain defence and security tasks as elements of the list in Article 49 Paragraph (1) of the Vbö.

639 TILL, Szabolcs: Preliminary assessment of the institutional system under the ninth amendment of the Fundamental Law based on the first year of the implementation transition period; VBSZK workshop papers 2021/19. *https://hhk.uni-https://tinyurl.com/ynv5zjek* 7-9., BALOGH - TILL im. 5-6. and KÁDÁR - TILL im. 14-16.

further changes in feedbacks built into the process and, primarily, to further changes in the security environment that triggered the reform. In retrospect, therefore, neither the regulatory solution based on a new law, nor the version based on amendments to existing laws can be judged to be qualitatively superior: the choice of regulatory method was primarily a constrained course determined by the regulatory framework, which ultimately led to changes of similar depth and in both cases resulted in substantial changes.

The original regulatory purpose of raising the threshold of special legal order can be seized particularly in the two elements of the Vbö. Previously, the prevention of an unexpected attack had been a separate type of special legal order from 1994 onwards, which later became a peacetime military crisis management task subject to the use of weapons as a subtype of unexpected intrusion, both on land and in the air. The replacement of the state of preventive defence had more complex regulatory consequences:

- a significant part of the tasks merged into the coordinated defence activities under the Vbö, took over a significant part of the tasks of allied preparation, while at the same time
- a fundamental revision of the concept of restauration of compulsory military service in a state of war, and the conversion of partial obligations into peacetime tasks - previously unthinkable - or their implementation in connection with a period of initiation became a regulatory task.

In that respect, the original two basic categories of special legal order, created in 2004 as a precursor to compulsory military service and for the implementation of allied preparation tasks, have been split as for the terms of treatment.

At the same time, however, the primary regulatory correction implemented by Vbö. could rather be identified with the regulatory objective of allowing an increased involvement of the Hungarian Defence Forces in law enforcement tasks. The previously critically used term "training army", and as part of that, the narrowly defined military tasks

becoming real requirements and, in that context, the possibility of involving law enforcement bodies in such tasks, became a focal area rather from the Tenth Amendment of the Fundamental Law.

While during the preparation of the Hvt., responding to hybrid challenges seemed to be the specific task requiring primary cooperation, after the outbreak of the Russia-Ukraine war in February 2022, the changed concept of emergency reassessed the need for narrowly interpreted military activities, and thus indirectly the importance of the civil defence segment of disaster management. The experience in Ukraine has demonstrated that sheltering activities, which fall at the interface of civil defence and disaster management and are rather costly, can play a role in ensuring basic survival in terms of resilience and preparedness, contrary to the previous assessment of them as a legal-historical institution. If history strikes back, and the likelihood of war between countries is to be evaluated as a challenge, dealing with it will require reactivating tools previously thought to be neglectable and spending money to develop them.

This shift of emphasis in the border area also applies to the element of demarcation between law enforcement and national security activities taken up by Vbö. Despite methodological similarities between the regulation of law enforcement and national security, there is a fundamental difference in terms of content: while law enforcement and, within it, disaster management activities are clearly subject to a defence and security context, national security activities in the narrow sense retain a specific regulatory core which cannot be touched by defence and security controls and in relation to which the defence and security interest is unpreferred. Narrowly defined reconnaissance and counterintelligence are such segments of activities whose visibility and depth are determined by the professional requirements of national security. The best example of the latter is the exclusion of national security activities from the scope of control in the government decree on inspections. [640]

[640] The task element assigned to the Nbtv. in Article 9 (b) of the Nbtv. contains the turn of phrase referring to the primacy of national security interests, which is repeatedly used

In this context, a framework of interpretation seems to be unchanged, according to which the amending provisions of the original version of Vbö. did not aim at a deeper correction than the creation of links resulting from a redefinition of the concept of law enforcement bodies, the deregulation of the obligation taken over from Kat. as well as the representation of the duty to cooperate in the performance of defence and security activities on all sides. The latter included the amendment of Rtv. and Nbtv., the clarification of Act XLIII of 2010 on Central State Administration Bodies and the Status of Members of the Government and State Secretaries and Act CXXII of 2010 on the National Tax and Customs Administration, or the addition of a new paragraph to Act CX of 2011 on the sStatus and Remuneration of the President of the Republic.

Ultimately, the definition under Article 5 Point 8. of the Vbö. already resulted in the double correction of the inclusion of customs and finance officers under the definition of law enforcement agencies and the exclusion of national security services but that was emphasised in the wording of the related technical amendments. The latter includes the succession of exemption rule in *Act VII of 2022 on the Exemption from Tolls*, the Chapter 32 of which (regarding the amendment of *Act LXVII of 2013 on the Tolls for the Use of Motorways, Expressways and Primary Roads in Proportion to the Distance Travelled)* built in the extended concept used in *Act XLIII of 2010 on the Central State Administration Bodies and the Status of the Members of the Government and State Secretaries,* also integrating Customs and Finance Guards into the concept, instead of the concept used in Vbö.

A later amendment of Kat. stands out among these corrections in that it was necessary to draw a line between minor malfunctions, which can be handled within the framework of sectoral regulation, and major catastrophic events that have a greater impact and require the use of governmental instruments and inter-ministerial coordination, and which

five times in the Nbtv. See also the narrowing down the list of verifiability under Article 2 Paragraph (4) of Government Decree 403/2022 (X. 24.) on inspections for defence and security purposes.

qualify as a defence and security incident. Act CXXI of 2021 Amending Certain Laws on Home Affairs in Connection with the Ninth Amendment to the Fundamental Law and Vbö. has incorporated the gradual approach into the provisions of Kat. as a subcategory of defence and security incidents under the Act but as a coordinated response not requiring the activation of a central body of the defence and security administration due to its size or timeframe, thus replacing the concept of disaster risk.

The addition of Article 7/E of the Counter-Terrorism Act, implemented by Act L of 2022 Amending Certain Aacts Serving the Security of Hungary, which designates the counter-terrorism body as the primary intervention management body in the event of a terror security incident, and which is related to the occurrence of a terrorist attack or a significant threat thereof, until the coordination activities of the central body of defence and security administration are initiated, can be assessed as a similar gradual rule.

The emergence of these two rules of gradualness, which partially go beyond the Vbö.'s entry into force, demonstrates how the concept of a defence and security incident under Article 5, point 15 of the Vbö.[641] is a very broad concept, which requires institutional discretion and the identification of the primary intervener and the institutions responsible for coordination, even when it is dealt with at sectoral level.

At the same time, compared to the subsequent differentiation of the lower entry level of governmental discretionary crisis management at the statutory level, the fate of the special jurisdictional threshold delimiting

[641] "15. security and safety event:
a) a sectoral breakdown, crisis or emergency not constituting a special legal regime, as defined by law, or a serious incident affecting the supply, security or continuity of the population,
b) a disaster or threat thereof,
c) a serious incident affecting the order and protection of the State border,
d) an incident which seriously threatens law and order, public order or public security,
e) a serious event prejudicial to or threatening the continuity of the functioning of the State,
f) A military threat significantly affecting Hungary,
g) an event giving rise to a fraternity obligation; or
h) the occurrence or significant threat of a terrorist attack;"

grey zone governmental crisis management can be assessed as an external environment of the Vbö., as a revised conceptual element of defence and security reform.

3. Regulatory feedback from the Vbö.

In its original version, the Vbö. sought to simplify and modernise the regulation in such a way that, while eliminating the areas previously identified as capacity gaps, it clearly set out the basic concepts and principles that would enable identified decision-making centres to manage the crisis without its escalation. In doing so, the reconciliation of diverging interests is a key element of planning, preparation and deployment. A resilient system must continuously ensure the capacity to respond in a manner consistent with the requirements of the rule of law:

> *"This concept of regulation aims to ensure the necessary and proportionate application of the options for action, in the spirit of the responsibility of the government, in order to increase the responsiveness of the government, in a way that is subject to the rule of law, in particular to parliamentary and constitutional control (...) The gradual and proportionate elements of the regulation aim to ensure that the functioning of a state crisis management system, capable of dealing with multiple simultaneous challenges, ensures the continuity of society, possibly without the introduction of special rules of law."*[642]

This is in fact the implementation of the Government Decision 1163/2020 (IV. 24.) on the National Security Strategy, point 142, which states that

> *"[T]he need for coordination between the bodies responsible for the external and internal security of the state, the armed forces, law enforcement agencies and civil authorities is greater than ever. In line with this, coordination and cooperation between foreign affairs, defence, law enforcement, national security,*

[642] Seven-party consultation at the Ministry of Defence *https://honvedelem.hu/hirek/hetparti-egyeztetes-a-honvedelmi-miniszteriumban.html* HM Communiqué 8 May 2021.

investigation, justice, economic and financial affairs, public health and epidemiology, food safety, disaster management and civil crisis management bodies should be continued and strengthened."

However, it is necessary to bear in mind that the defence and security reform did not take place in a regulatory vacuum, so the new governance structure resulting from the 2022 elections, as well as the horizontal reforms, have also had a fundamental impact on the possibility of the Vbö. entering into force. In that respect, we must primarily refer to the changed security environment, which, while maintaining the focus of the whole of government, necessitated a partial adjustment of the gradualism principle of the law, in particular due to the reassessment of the threshold level of emergency.

In that context, the principles of necessity and proportionality have also been reinterpreted: a more restrictive interpretation of purpose limitation has gained more importance, so that the emergency management system adapted to the preceding epidemic management had to be rethought in order to deal with the secondary effects of wars crossing the border. In this respect, the emergency rules of the framework under a *wartime state of danger* were applied in a conceptual framework that was changed by the Tenth Amendment of the Fundamental Law, so that the one hundred and eighty-day timeframe of the emergency was finally incorporated into Article 82/A of Vbö. on the initiative of the representatives as a result of *Act XXXII of 2022 amending Act XCIII of 2021 on the Coordination of Defense and Security Activitie*s in connection with the extension of a state of danger.

Comparing the practices of applying different budgetary rules for the COVID epidemic management and the measures in favor of Ukrainian refugees, especially special legal order, the application of formally identical measures for different purposes has become a decisive factor as for constitutional review.

At the same time, the amendment has shifted the rules of state of danger towards a specific interim direction between the other two special legal

order conditions: an extension of the authorisation for a period of about six months, especially if it is repeatable, is thus similar to the rules of state of war in terms of its longer duration, since there the scope of special legal order regulation may be declared for an indefinite period of time, in accordance with the duration of the conflict, while the initial period of thirty days determined by the Fundamental Law presupposes the shorter period as a starting point of the presumption of regulation. Although, in dealing with the cross-border effects of war, the *wartime state of danger* may ultimately become a de facto lobby to the state of war by incorporating new conceptual elements, the statutory delimitation of the abstraction of the limited extension of the time limit in the Fundamental Law nevertheless reinforces the need the special legal order to be terminated.

At the same time, the addition of the concept of emergency, beyond the clarification of purpose limitation, had a systemic impact on the regulatory concept under Vbö. by narrowing the scope for the application of the legal category of coordinated defence action as a summary of peacetime crisis management: the specific threshold of gradualism in this area was lowered before taking effect on 1 November 2022 because of the conceptualization of *wartime state of danger*.

The regulatory solution for renewing the defence regulatory system, linked to new acts, provided an opportunity for bringing the Vbö. into force with data management rules and the institutional system of incident management in a more detailed manner and with a solution that allows for gradualism.

Thus, while in the field of national security and law enforcement the regulatory solution based on amendments can be regarded as characteristic, in the defence regulatory segment this instrument can be seen in the case of the Vbö. itself, which can also be seen as an interim revaluation of the presumed role of narrowly defined defence activities. The importance of preparing for defence-type challenges within the system of defence and security activities can also be seen from the fact that, in comparison with the provisions of the Vbö., planning and

stockpiling tasks linked to defence objectives are also to be found in the Hvt.

In that respect, the Hungarian Gazette of 21 October 2022, which contained in the same issue the *Government Decision 1508/2022 (X. 21.) on certain issues of defence preparedness* and a significant part of the Government Decrees of the Vbö., can be considered as an imprint of a special date. Point 4 of the 2022 Defence Preparedness Tasking Plan, annexed to the Government Decision, included the task of renewing the defence and security administration in the context of a systemic development of the country's defence and security, the preparation of professional recommendations for government-level coordination on special legal orders and crisis management tasks under the coordination of the Prime Minister's Office, as well as the presentation of the requirements of the regulatory system to be renewed on 1 November 2022 in the preparation of special legal orders. The other parts of the Government Decision also emphasise the obligation to cooperate in the segments of crisis management measures requiring military and civilian expertise, including the task of joint exercises in the field of defence against hybrid threats.

Based on all this, at the time of the defence and security reform coming into force, the main objective of the reform is, in addition to the introduction of a defence and security context, to make the cooperation between defence and security organisations two-way: the aim is no longer to involve the Hungarian Defence Forces in the management of disaster management and broader law enforcement challenges but to do so with regard to the basic tasks of the military. At the same time, the assessment of the changed security environment does not exclude the possibility that the performance of military tasks in the narrow sense may be put on the agenda, leading to cooperation between law enforcement agencies and their supporting role for the Hungarian Defence Forces.

Moreover, these challenges require constant reassessment, with the requirement to respond without delay becoming a fundamental aspect of

government-wide reflection and preparedness.[643] The continuity of state operations is a fundamental requirement that, beyond meeting NATO's national resilience requirements, is a primary means of ensuring the survivability of the state and, by extension, of society. However, before evaluating *Act VII of 2022,* which is the primary means of implementing this regulatory objective, it is useful to draw attention to the amendments to the Vbö., which are also evidence of continuous feedbacks that can be demonstrated in the reform process.

Among the original amending provisions of the Act, the amendment of *Act XXXVI of 2012 on Parliament* and the amendment of *Act CXXV of 2018 on Government Administration* are worth highlighting. The common element of these two laws is the inclusion of the central body of defence and security administration in the scope of cooperation. The latter was not yet known at the stage of this regulation, as the *Government Decree 337/2022 (IX. 7.) on the Defence Administration Office* was only concretised on 1 October 2022, i.e. subsequent to the date when the amendment to the Fundamental Law took effect, purposing the acceleration of the defence and security reform.

By comparing the original text of the Government Decree with the version in force after the Vbö. was brought into effect, it can be seen that the coordination of the professional processes of defence and security sector reform, including the establishment of the organisation, the coordination of sectoral proposals, the preparation activities and the administrative preparation have become priority tasks, the implementation of which had already started before the Decree took effect. As a result, the Defence Administration Office could continue its activities as the central body for defence and security management from

[643] Compared to the national resilience requirements under Article 42 Paragraph (1) of the Vbö, Article 12 of Government Decree 614/2022 (XII. 29.) on the implementation of certain provisions of the Act on National Defence and the Hungarian Defence Forces attempts to define the national defence interpretation domains of the defence and security context as part of the concept of civil preparedness as part of the concept intended to support military operations with civil capabilities in order to supply and ensure the Hungarian Defence Forces and the allied armed forces.

1 November 2022, even though some of the activities[644] listed in Article 52 of the Vbö. had already been carried out by that date. However, two points of the otherwise open list of tasks are not the originally adopted normative text, since two major corrections were made to the Vbö. in 2022 in connection with the revision of the defence regulations:

- Article 111 Paragraph (2), point i) modified by *Act VII of 2022,*. because of merging of state organisations could be incorporated by the date of entry into force, but
- point c), fine-tuned by *Act LXIII of 2022 Amending Certain Acts Related to the Operation of the Hungarian Defence Forces*, was only amended on 1 January 2024. The essence of the latter correction is the inclusion of content discretion and deployment phasing solutions in the development of the national crisis management centre.

[644] Article 52 of Vbö: Central body of the defence and security administration
a) coordinate the administrative tasks related to Hungary's security and defence interests and their performance,
b) coordinate the tasks of security and safety planning specified in this Act in order to exercise the Government's management powers,
c) if the Government so decides, operate a national incident management centre for the purpose of incident management, whose main task is the professional coordination and harmonisation of all-governmental crisis management and the provision of special legal order during preparation periods and during defence and security incidents,
d) coordinate the preparation of the whole-of-government for coordinated defence activities,
e) prepare the requirements for the training of defence and security organisations and the staff of the public administration for defence and security purposes,
f) coordinate the planning and delivery of tasks related to the promotion and development of national resilience,
g) coordinate the establishment and maintenance of the special conditions necessary for the Government's operation in crisis situations and special legal orders, as provided for by Government Decree, and propose the budgetary resources required for this purpose,
h) monitor and support scientific research contributing to the promotion of defence and security interests and related developments, as well as to the identification of technological and societal challenges related to security and defence,
i) monitor the provision of and preparedness for defence and security in ministries, government headquarters and central offices,
j) coordinate the sectoral tasks of special legal preparation, and
k) perform such other duties as may be assigned to it by law.

However, the fact that the milestone day for defence and security reform was earlier than the originally set 1 July 2023, made it in itself necessary to amend the Vbö.. Technically, this includes the revision of references to the Hvt. in the Vbö., which is an automatic consequence of the re-enactment of the Defence Act. In addition, however, it is necessary to highlight the need for a more detailed legal presentation of the rules on defence and security data management as well as a revision of the empowering provisions.

In the latter area, the amendment reorganised the previous list of regulatory powers into a catch-all list of concepts and replaced the conditional statutory power to allow the entry into force of a coordinated defence action. The legislator's intention to allow regulatory intervention in areas comparable to special legal order restrictions in the introduction of coordinated defence action created a regulatory need which, unlike the constitutional authorisation to introduce special legal order measures, requires a separate statutory authorisation in order to be introduced. Thus, in addition to the need for a statutory definition of the scope of government measures to deal with defence and security incidents without a risk of escalation, separate legislative empowerment was also required.

From this point of view, therefore, the enforcement of the framework under the special legal order chapter is formally separated from the institution of government-wide crisis management. Although primary demarcation is based on the principle of the inviolability and inalienability of fundamental rights, the governmental measures in the area of response to challenges and preparedness differ in substance from general state organisation in peacetime. In addition to setting out the framework, also the specific way in which it is to be introduced had to be regulated by law, in order to ensure that it can be implemented.

This has closed the institutional system for addressing grey zone challenges. In this context, however, the preparation of related regulations also had to take into account that building state responsiveness is not only a regulatory but also an institution-building issue, where the objective of the Vbö. could not be implemented in one

step, especially after acceleratingthe entry into force. The regulator has therefore redefined the method and time horizon of implementation, considering the preparatory steps taken priorly in terms of feasibility.

The development of a national incident management capability has been set out as a multi-stage process. The objective of creating a stable organisational framework for dealing with emergencies has therefore remained unchanged but the requirement of gradualness for crisis management at local, sectoral and government-wide level has been differentiated over time in terms of institutional arrangements. At the same time, as a result of a multi-stage process, the development of a stable organisational framework for dealing with emergency situations, coordinated by a central body for the administration of defence and security, remained an unchanged task, but alongside the objective of broader involvement of society, it also became a reform element that could only be implemented in the longer term.

4. Communication is a priority: renewing alert systems

Perhaps the most striking example of the different functional and systemic emphases of the interconnections between different regulations is the renewal of alert systems. The development of the alert system for defence and security purposes is an institutional and procedural system, which can be divided into state and public levels according to the general system description under Article 71 of the Vbö. However, in addition to the terms of reference addressed to the Government pursuant to Article 46 Paragraph (1) Point n), which define the decision-making and operational arrangements for the system, the Vbö. does not contain any further regulatory element, including the lack of a power to issue an implementing regulation.[645]

[645] There was no explicit authorisation for this subject matter in the Vbö. prior to the narrowing revision of Article 83 of the Vbö. For an analysis of the original list, see Pál KÁDÁR: Analysis of the basic concept and possible perspectives of the defence-security regulatory reform system; VBSZK Workshop Studies 2022/8. *https://tinyurl.com/5a2akw4y* 16-17.

In contrast, the original subject of national defence authorisation is air defence alert, which is covered by the Hvt. Article 110. paragraph (1) point 3) of the Act, and is related to the substantive provisions of the Act in that in Article 10 the tasks related to the operability of the alert systems, in Article 11 Paragraphs (2) and (3) the role of public information and alerting of the public by the parties concerned, in Article 45. Paragraph (1) Point a) as a primary task in the changed preference of civil defence tasks for the period of armed conflicts, and the possibility of a level of alerting citizens as a government measure in a national defence crisis situation under Article107 Paragraph (4). Since repelling an unexpected attack is a priority in Article 3 Paragraph (6) of Hvt., Article 45 applies to this framework in addition to the state of war.

Based on the separation of the system from disaster management tasks pursuant to Article 45 Paragraph (1), the system is also linked to the disaster management alert subsystem, although the purpose of activation is inherently separate. It should also be noted that the issue of alerting to a terrorist threat is not regulated as such in Rtv. *Act CXLII of 2021 on Amending Certain Acts for the Purpose of Harmonisation of Law, in order to create the interoperability of EU information systems in the areas of borders, visas, police and judicial cooperation, asylum and migration* amended the *Act CLXXXV. of 2010 on Media Services and Mass Communications* in connection with Vbö.'s entry into force. This modified Media Act includes the obligation to inform media service providers in times of special legal order and unexpected attack, and Act VII of 2022 amended also *Act C of 2003 on Electronic Communications* to include the bodies covered by this scope to the preparation tasks in connection with special legal order, coordinated defence activities and unexpected attacks.

In practical terms, a complex system of siren systems, electronic media services and internet news services has thus become involved in notification and alerting tasks, capable of alerting in the event of a failure of any of the subsystems. However, the defence and security purpose of the alert remains an unresolved issue at the level of the law, in contrast to

a direct emphasis on air and disaster alerts and the latent presence of a terrorist threat alert.

At governmental decree level, all that was regulated in detail in Chapter IX of *Government Decree 614/2022 (XII. 29.) on the implementation of certain provisions of the Act on Defence and the Hungarian Defence Forces*, which was organised around the institutional system of air defence alert, differentiated according to the objectives of disaster management and terror alert. This is in line with *Government Decree No. 136/2024 (IV. 20.) on the system of preparation of electronic communications for defence and security purposes*, on the related tasks of state administration bodies and on ensuring the conditions of their operation, which fulfils the authorisation in *Act C of 2003 on Electronic Communications* by harmonising the system of tasks of preparation and alerting. The specificity of an interpretative provision in Article 1 of this Decree is that it only distinguishes disaster alerts designated by law, from air defence alerts, indirectly including counter-terrorism alerts in the latter. However, a legal definition of the basic rules in the latter area is still lacking.

As shown in the outline of the interfaces of the alert system, the inherent defence links in the defence and security context, and the closed system of regulatory activity based on COVID-19 and later on disaster management experiences originating from a neighbouring country, may give rise to additional regulatory needs for homeland security activities, which is also affected by the demarcation of law enforcement and national security domains.

5. The role of the Constitutional Court in the development of the framework

By maintaining the requirement to comply with the rule of law as a constantly stated governmental objective during the legislative phase of the introduction of the defence and security reform, the special legal order regime was considered in the context of continuous challenges to the

restrictive institutions by dissenting parties as well as an environment that disagreed with the objectives of the defence and security reform and by the emergency measures that coincided with the introduction of the reform.

The law-enhancing impact of the Constitutional Court in the emergency context has been specifically assessed by several studies. As a conclusion of the studies written by Professor Lóránt Csink and the author of the present chapter,,[646] it can be stated that the Constitutional Court has played a cooperative role in the development of special legal dogmatics, clarifying the criteria for the assessment of fundamental rights restrictions and the different elements of the special legal order of financial constitutionalism.

A recent summary of these two sets of requirements can be found in the case of a complaint against *Government Decree 197/2022 (4.VI.) on the Extra Profit Tax* in CC Order 3214/2024 (V. 5.).[647] The peculiarity of the five-judge order of the Council, which resulted in the rejection of the substance of the complaint, is that it assessed the introduction of a financial obligation which was brought into force before the date of the defence and security reform but whose substance remained essentially in force also after the ninth and tenth amendments to the Fundamental Law.

Thus, while the doctrine of the Constitutional Court developed during the COVID-19 crisis management period harmonised the framework of the authority of judged fundamental rights restrictions at the constitutional and statutory level, stating that statutory rules do not result in a set of criteria to be taken into account in an independent assessment beyond the requirements of constitutional law, this time an interpretation of financial

[646] TILL, Szabolcs: Special Legal Order 2020-2023. Hungarian Society for Military Law and Law of WarBudapest, 2022. 63-94. TILL, Szabolcs: The Constitutional Jurisprudence and the Special Legal Order; Military Law and Military Law Review 2022/3. *https://tinyurl.com/pvwb5kbx* 5-63. (TILL 2022.), and CSINK, Lóránt: Fundamental Rights in the Special Legal Order. VBSZK Workshop Studies 2022/6. *https://tinyurl.com/2s32mkx5* and CSINK, Lóránt: A constitutional approach to the introduction of a special legal order (VBSZK Workshop Studies 2023/3. *https:*//tinyurl.com/evfbj9mb)

[647] CC Order 3214/2023 (V. 5.) on rejecting a constitutional complaint https://tinyurl.com/yc7hbzau

constitutionality was made by establishing the criteria for the judgability of payment obligations not introduced at a statutory level.

The Constitutional Court has developed a six-step evaluation system for the assessment of the rule restricting the powers of the Fundamental Law: in this process, it has separately assessed the following points [41]

- the condition for the public debt measure,
- as a procedural condition for being subject to the competences under Article 24 Paragraph (2) Points b) to e) of the Fundamental Law,
- the subject-matter condition for the purpose of the clause,
- the legal source condition (legal status),
- the condition of exceptions to fundamental rights where the Constitutional Court may nevertheless act,
- lastly, the exception of public law nullity, in the event of a breach of a procedural rule at the level of fundamental law.

This means that the first four conditions are all met as a prerequisite for a substantive assessment, on condition thatone of the last two conditions is met.

Point [55] of the order sets out the distinction between a special legislative decree and a governmental decree which may be made in normal legal order, where the designation does not differ but the introductory part of the decree must clearly refer to the constitutional authorisation which gaver rise to the special legislative order. Point [56] of the order states that

> *"...because of Article 53(2) of the Fundamental Law - and since 1 November 2022 Article 53(1) - the hierarchy of legal sources does not apply in the period of the special legal order in the same way as in the ordinary legal order. During the period of the emergency, a government decree issued on the basis of the special legal order authorisation, which otherwise concerns legal*

relationships subject to statutory regulation, is a quasi-legislative source of law",

the admissibility of which is subject to constitutional review in the light of the constitutional exception to jurisdiction.

Thus, the novelty of the Constitutional Court's order can be highlighted in that it standardised the procedure for introducing special legal orders and defined the status of legal source for special legal orders, identifying the latter with the statutory level. A particular feature of the order is that Tamás Sulyok, then President of the Constitutional Court, currently President of the Republic participated in its adoption as a leading constitutional judge, who, in a parallel reasoning, had earlier questioned the amendability of substantive criminal rules at the level of governmental regulations in the context of special legal orders by absolutising the principle of *nullum crimen sine lege* in relation to the Penal Code.[648]

Highlighting the latter debate in the light of the ruling on extra-profit tax is also necessary since the Constitutional Court has confirmed in this decision its exclusive power to interpret the Fundamental Law in a binding manner. In particular, in the light of the explanatory memorandum of the proposer of the Tenth Amendment to the Fundamental Law, that gives rise to an apparent dispute between the Constitutional Court and the constitutional power, since the latter's regulatory will, as expressed in the explanatory memorandum, ultimately also guides the Constitutional Court, even if it has canonised the specific legal-judicial requirements of the Constitutional Court's test of fundamental rights in a partially different way.[649] In this respect, the national level of constitutional dialogue thus becomes an interpretative

[648] See the parallel explanatory memorandum to CC Order 3325/2022 (VII. 21) on termination of proceedings. *https://tinyurl*.com/rp2e6sjt For this emphasis see TILL 2022. 40-43.

[649] For an analysis, see TILL 2022. 53-57. About further developments, comparing COVID-19-based cases with wartime state of danger see Szabolcs Péter TILL–Károly RIMASZOMBATI (2024): First Impressions of the Hungarian Defence and Security Regulation Reform Focusing on Special Legal Order in Practice - Possible Further Developments; *Védelmi-Biztonsági Szabályozási és Kormányzástani Műhelytanulmányok* 12.

dimension to be analysed in the context of teleological interpretation of law in the same way as the evaluation dimension used to describe the relationship between national constitutionalism and EU constitutionalism.

6. Summary

Defence and security reform started with the Ninth Amendment to the Fundamental Law and gained its basic framework with the adoption of Vbö. but it is constantly evolving through related legislative and governmental activity. Accordingly, it is likely that, particularly in the context of the institutionalisation of incident management and the introduction of restrictive measures related to special legal orders or coordinated defence activities, the constitutional framework of the rulebook will continue to evolve, establishing a set of requirements and a framework of constitutional doctrine for specific periods.

A particular feature of the last years of defence and security reform has been the parallel development of specific legal restrictions and the framework of the system, although the textbook expectation is that simultaneous system development and implementation is not optimal. This is, however, a historical specificity that can be linked to the conceptual framework of state/national resilience while addressing changing security challenges and, if adopted, can be confirmed as a unique historical experience. In our view, Vbö. has since its entry into force, brought about profound changes in the legal system, the results of which have significantly contributed to consolidating the conclusions of theoretical debates that preceded it and the development of a more functional system of state administration institutions.

From that point of view, the cooperation requirement of Vbö. cannot be ignored as a fundamental principle that provides the starting point for necessity and proportionality tests. According to the regulatory hypothesis of the reform of defence and security, compliance with the rule of law must not lead to the possibility of the state's inability to function: the state's ultimate objective is to ensure the external and internal security of society and its uninterrupted functioning, in relation

to which the quality of regulation must be assessed not only in terms of compliance with legal doctrinal requirements but also in terms of the safeguarding of functions. The added value of security and defence reform is primarily to be found in the latter aspect.

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List of abbreviations

AB: Alkotmánybíróság [Constitutional Court]
BBK: Bundesamt für Bevölkerungsschutz und Katastrophenhilfe [Federal Office for Civil Protection and Disaster Assistance]
BfV: Bundesamt für Verfassungsschutz [Federal Office for the Protection of the Constitution]
BKA: Bundeskriminalamt [Federal Criminal Police Office]
BMI: Bundesministerium des Innern, Bau und Heimat [Federal Ministry of the Interior, Building and Home Affairs]
BSI: Bundesamt für Sicherheit in der Informationstechnik [Federal Office for Information Security]

Btk.: Büntető Törvénykönyv [Criminal Code]
CEPC: Civil Emergency Planning Committee
CISA: Cybersecurity and Infrastructure Security Agency
CMX: Crisis Management Exercise
COE: Council of Europe
COVID-19: Coronavirus disease 2019
RC: NATO Resilience Committee
CPNI: Centre for the Protection of National Infrastructure
CRS: Congressional Research Service
DHS: Department of Homeland Security
DLRG: Deutsche Lebensrettungs-Gesellschaft e.V. [German Life-Saving Society]
EU: Európai Unió [European Union]
FEMA: Federal Emergency Management Agency
FLQ: Front de libération du Québec
GCC: Kormányzati Válságkezelési Központ [Government Crisis Management Centre]
GDPR: General Data Protection Regulation
GMLZ: Gemeinsames Melde- und Lagezentrum [Joint Reporting and Situation Centre]
GSMS: Government Strategic Management System

HFB: Hadi Felügyelő Bizottság [War Supervisory Board]
HIKOM: Honvédelmi Irányítás Koordinációs Munkacsoport [Interministerial Working Group on Defence Management Coordination]
HM: Honvédelmi Minisztérium [Ministry of Defence]
Hvt.: Honvédelmi törvény [Defence Act]
Hvt. Vhr.: Honvédelmi törvény végrehajtási rendelete [Implementation Decree of the Defence Act]
Hvt2011: Act CXIII of 2011 on National Defence and the Hungarian Defence Forces and on Measures that May Be Introduced in Special Legal Regimes
IEEPA: International Emergency Economic Powers Act
ISAF: International Security Assistance Force
JSOU: Joint Services Operational Unit
Kat.: Katasztrófavédelmi törvény [Disaster Management Act]
Kivhattv.: Kivételes Hatalmi Törvény [Exceptional Power Act]
KLKF: Kilián György Repülő Műszaki Főiskola [Kilián György Aeronautical Technical College]
KR: Katonai referens [Military referent]
LHT: Legfelsőbb Honvédelmi Tanács [Supreme Defence Council]
LUISS: Libera Università Internazionale degli Studi Sociali Guido Carli
Lvtc.: Légvédelmi törvény [Air Defence Act]
MNL OL: Magyar Nemzeti Levéltár Országos Levéltára [Hungarian National Archives]
MSZMP: Magyar Szocialista Munkáspárt [Hungarian Socialist Workers' Party]
MTVA: Médiaszolgáltatás-támogató és Vagyonkezelő Alap [Media Services Support and Asset Management Fund]
NATO: North Atlantic Treaty Organization [Észak-atlanti Szerződés Szervezete]
Nbtv.: A nemzetbiztonsági szolgálatokról szóló törvény [National Security Services Act]
NCRS: NATO Crisis Response System
NDPP: NATO Defence Planning Process/System

NIR: Nemzeti Intézkedési Rendszer [National Response System]
NKS: Nemzeti Katonai Stratégia [National Military Strategy]
NMHH: Nemzeti Média- és Hírközlési Hatóság [National Media and Infocommunications Authority]
NPS: Naval Postgraduate School
OGY: Országgyűlés [National Assembly]
OLGI: Országos Légiriadó Jelzőrendszer [National Air Alert System]
Rtv.: Rendőrségről szóló törvény [Police Act]
SARS-CoV-2: Severe acute respiratory syndrome coronavirus 2
Sb.: Sbírka Zákonů [Czech Republic's Law Collection]
SC: Strategic Concept
SVKI: Stratégiai Védelmi Kutatóközpont [Strategic Defence Research Centre]
Tt.: Törvénycikk [Article of Law]
Tv.: Törvény [Act]
UN: United Nations [Egyesült Nemzetek Szervezete]
UP KRITIS: Umsetzungsplan Kritische Infrastrukturen [Critical Infrastructure Implementation Plan]
Vbö.: a védelmi és biztonsági tevékenységek összehangolásáról szóló törvény [Act XCIII of 2021 on the Coordination of Defence and Security Activities]
Vhr.: Végrehajtási rendelet [Implementation Decree]
VBSZK: Védelmi-Biztonsági Szabályozási és Kormányzástani Kutatóműhely [Defence-Security Regulatory and Governance Research Workshop]
ZMNE: Zrínyi Miklós Nemzetvédelmi Egyetem [Zrínyi Miklós National Defence University]

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Afterword

The present comprehensive volume on Hungary's defense and security regulation reform offers invaluable insights into the nation's evolving approach to crisis management and national resilience. The structure of the book, spanning from historical context to future outlooks, provides a holistic view of the complex challenges facing modern states in an increasingly unpredictable global security environment.

The analysis of various national systems, from Visegrad countries to Anglo-Saxon models, highlights the diverse strategies employed worldwide and underscores the importance of tailoring approaches to specific national contexts.

Central to the book's discourse is the examination of Act XCIII of 2021 on the Coordination of Defence and Security Activities. The detailed exploration of this legislation's basic rules, obligations, and planning systems demonstrates Hungary's commitment to creating a more integrated and flexible approach to national security. The emphasis on whole-of-government crisis management and the coordination of various sectors reflects a modern understanding of the interconnected nature of contemporary threats.

Particularly noteworthy is the book's focus on national resilience, a concept gaining increasing prominence in international security discourse. The chapters dedicated to that topic provide valuable insights into Hungary's efforts to enhance its capacity to withstand and recover from diverse challenges. That aligns with broader trends in NATO and EU strategies, highlighting the book's relevance going beyond national borders.

The sections on defense and security management systems offer a comprehensive overview of the institutional framework designed to implement these new approaches. By detailing the roles of various governmental bodies and organizations, the book provides a clear picture of how Hungary aims to operationalize its reformed security strategy.

The inclusion of chapters on specific aspects such as alert systems, inspections, exercises, and coordinated defence actions demonstrates a practical approach to security preparedness. These elements are crucial for translating theoretical frameworks into effective real-world responses to crises.

Of particular interest is the discussion on special legal order and its preparation. The analysis of the catalogue of special measures and the balance between defined actions and flexible responses addresses one of the key challenges in modern crisis management: maintaining democratic principles while ensuring swift and effective action in case of emergencies.

The book concludes with forward-looking chapters that place Hungary's reforms in the context of NATO and EU resilience strategies. That international perspective is crucial, recognizing that national security in the 21st century is inherently linked to regional and global stability.

In today's world, where threats range from pandemics to hybrid warfare, the importance of adaptive, comprehensive security frameworks cannot be overstated. This volume not only provides a detailed account of Hungary's approach but also offers valuable lessons for other nations grappling with similar challenges. The emphasis on integrated planning, whole-of-society involvement, and flexible response mechanisms reflects a sophisticated understanding of modern security paradigms.

For legal scholars and practitioners in the field of national security, the present book serves as both a practical guide to Hungary's new regulatory framework and a thought-provoking exploration of contemporary approaches to defense and security. It underscores the need for continuous adaptation in legal and institutional structures to address evolving threats effectively.

In conclusion, this volume makes a significant contribution to the literature on national security and defense regulation. Its comprehensive analysis of Hungary's reforms provides valuable insights for policymakers, scholars, and practitioners alike, offering a model for how

nations can modernize their security frameworks to meet the complex challenges of our time.

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