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RECEIVED 23 December 2023

ACCEPTED 22 April 2024

PUBLISHED 03 May 2024

## CITATION

Mészáros G (2024) Misuse of emergency powers and its effect on civil society—the case of Hungary. *Front. Polit. Sci.* 6:1360637. doi: 10.3389/fpos.2024.1360637

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# Misuse of emergency powers and its effect on civil society—the case of Hungary

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Democratic tolerance has been used for their own destruction in Hungary. Gradually, various forms of crisis management have become the very nature of the governing political parties since 2010. Under the framework of Carl Schmitt's enemy-friend dichotomy, the Orbán regime has created its own "enemies" partially among those who would never be thought to be a threat to a constitutional democracy but to be considered its foundational elements (political opposition, NGOs, free media, etc.). This article shows how emergency powers and autocratic legalism were misused against civil society. There is one simple goal for the Hungarian autocratic regime: defending "our democracy" against "them," who would still like to promote liberal democracy and the rule of law.

## KEYWORDS

Hungary, autocratic transition, permanent state of exception, misuse of emergency powers, rule by decree

## 1 Introduction

Hungary's commitment to liberal democracy, the rule of law, and constitutionalism has changed in a negative direction. The process has been described in several ways, such as "democratic decay" (Daly, 2019, p. 9–36), "illiberalization" or "illiberal constitutionalism" (Drinóczi and Bień-Kacała, 2019, p. 1140–1166), "authoritarianization" (Lindberg and Lührmann, 2019, p. 1095–1113), "populism" or "populist constitutionalism" (Szente, 2023), "democradura" (Halmi, 2018), "hybrid regime" (Bozóki and Hegedus, 2018, p. 1173–1189), "abusive neo-militant democracy" (Drinóczi and Mészáros, 2022, p. 98–114), and various types of authoritarianism (Puddington, 2017; Tóth, 2017). Throughout the history of autocratic regimes, abusing emergency powers stands out as a common denominator. It is not the aim of this paper to participate in this political and legal debate and, therefore, widen the scope of the description of the Hungarian regime. At this point, it should be enough to accept that the Hungarian government uses autocratic techniques to cement its political power on the one hand. On the other hand, the Fidesz (Young Democrats) and KDNP (Christian Democrats) coalition misuse emergency powers to achieve this aim, which is also an essential and relevant characteristic of the regime (Mészáros, 2021).

The scientific literature on the rule of law asserts the importance of non-state actors, most notably civil society. We are aware that domestic civil society and external actors may help new democracies in many ways that aid judicial autonomy. Domestic civil society groups serve as watchdogs, which basically serve the independence of courts and the rule of law.

The watchdog function of these groups is not solely related to the possible abuse of the executive. Still, human rights groups and independent lawyers' associations might also help judicial independence by criticizing or commenting on important court decisions. So, the interaction between civil society and the relevant political actors is indispensable for the rule of law and for a healthy democracy (Chavez, 2013). When the rule of law no longer serves to protect individuals from executive or parliamentary overreach, it may be recognized as formally legal but not necessarily in line with the rule of law principles. In Hungary, the law now serves the government's interests, neither those of civil society nor the protection of citizens' rights. It is not unique that autocratic techniques conducted with legislation were used against civil society. In Poland, it took 2 years to subordinate civil society through legislation, and two institutions were created to centralize state control over funds for NGOs (Sadurski, 2018). Of course, the Hungarian Parliament, with the supermajority of the Government within, also used legislation to control civil society. However, the way it did it is more different from the Polish case.

The government used the "crisis" as a reference point to control civil society as well. The abuse of emergency powers began in 2015 by passing emergency measures as seemingly ordinary, quotidian legislation; this process ultimately culminated in a permanent state of exception by 2023. I use this phenomenon as an offset to the state of emergency in its "ideal" form, which can be defined as a "crisis identified and labeled by a state to be of such magnitude that it is deemed to cross a threat severity threshold, necessitating urgent, exceptional, and, consequently, temporary actions by the state not permissible when normal conditions exist" (Greene, 2018, p. 33). I accept that this definition should be used under laboratory conditions, meaning normalcy can be separated from emergency (Gross, 2003, p. 1089–1095). However, the aftermath of 11 September 2001 has led to arguments that this dichotomy is no longer possible. Therefore, we should discuss a permanent emergency where the so-called exception has become the norm and temporary powers endure. After the "autocratic revolution" (Scheppele, 2015), the Hungarian Government pursued a combination of emergency measures and rule by law. As such, the law was manipulated into an instrument of government action (Tamanaha, 2004). This approach resulted in a situation where—rather than upholding the rule of law and protecting the rights of individuals—the legislation serves the government's interests.

The central theme of this paper is the misuse of emergency powers by an autocratic government, which has resulted in a significant erosion of democratic norms. I will consider whether the notion of unlimited emergency power is consistent with the rule of law and democratic values and focus on the question of how the government's measures of handling real and fictitious emergencies affect of how the government's measures of handling real and fictitious emergencies affect civil society. As I will show, the government not just misused its emergency powers in relation to independent NGOs but also used legislation and emergency rhetoric against one of the most important enemies of the "people": the human rights NGOs. The paper first shows the Hungarian state of emergency, which is a mixture of fake and constitutional emergency regimes. After, I will show the continuous verbal and legal attacks on civil society and, most importantly, analyze how

the "mass migration card" was used as an autocratic practice against civil society.

## 2 Misuse of emergency powers: the regime of permanent state of exception

### 2.1 Migration emergency

It goes far beyond the capacity of this article to show in detail how the Hungarian Government used and misused emergency powers against democracy and the rule of law. Still, it is essential to briefly describe this unique situation as the state of exception has now become the standard way of governance.

The (mis)use of emergency powers started in 2015 with a countrywide campaign against mass migration. After the relevant authorization from Parliament, the Hungarian Government declared a state of migration emergency. It should be noted that this emergency regime bypassed the constitution's relevant emergency chapter (which is called "Special Legal Orders") and the emergency rules infiltrated into the regular legal order. Although regular constitutional checks by the Hungarian Constitutional Court would have prevailed, the already packed constitutional court is no longer an effective judicial body in the country (Chronowski et al., 2022). The government has extended this so-called emergency in 6-month intervals. The government's state of migration emergency decree shall remain in force for not more than 6 months, except if the government extends the effect of the order, which can be done only if the conditions for declaring the "state of migration emergency" continue to apply at the time of an extension.

Although the conditions underlying this special emergency regime have not applied for years, the Hungarian Government has renewed it at 6-month intervals to the present day; not only is this problematic at a constitutional level, but such action contradicts the Act itself. Under this emergency regime—compared to the non-emergency asylum rule—an accelerated procedure is used, and the deadline for challenging the findings of the refugee authorities is shorter (3 days instead of eight). Although the rules mentioned under this so-called emergency regime are mainly procedural issues, other essential restrictions could be used such as that the Armed Forces can be deployed to maintain the security of the border with the possibility of using weapons (Mészáros, 2024). It should be mentioned again that these rules—although using the term "emergency"—still exist within the ordinary legal order.

### 2.2 From pandemic emergency to the emergency responding to the war in Ukraine

In the wake of the initial outbreaks of the novel coronavirus in 2020, the government implemented a state of danger ("veszélyhelyzet") through the Fundamental Law's emergency chapter, and it authorized Enabling Acts, granting the government broad authority to manage the COVID-19 pandemic (Mészáros, 2021). In accordance with the Special Legal Order regulations

outlined in the Fundamental Law, the government is granted the authority to issue emergency decrees during times of peril or other exceptional circumstances. These decrees allow for the suspension of certain laws or deviations from legal provisions, in addition to other extraordinary measures. It is worth noting that emergency decrees are formally identical to ordinary decrees, with no discernible differences in their titles, names, or numbers. The only discrepancy between the two is found at the beginning of the text, where emergency decrees explicitly state the government's authorization to suspend or deviate from laws based on the Special Legal Orders chapter of the Fundamental Law. The authoritarian government relied heavily on emergency decrees to exert its control, even in situations unrelated to the pandemic. For instance, they employed this tactic to enforce caps on food and fuel prices, extending their reach beyond what is legally permissible, and emergency powers were used against human rights NGOs as well.

After the war in Ukraine started and the pandemic-related restrictions incrementally lifted worldwide, the government noticed another opportunity to prolong the practice of rule by decree. In order to that, in December 2020, in the midst of the pandemic—when Hungary was among those countries which led the death rate per capita in a global comparison—the Hungarian Parliament adopted the ninth amendment to the Fundamental Law. This new amendment—among other non-emergency related topics such as the modifications which stated that marriage can be understood as a relationship between women and men; or the one which proclaimed that “Hungary protects the right of children to be identified by their sex assigned to them at birth and provides for their education in accordance with the values based on Hungary’s constitutional identity and Christian culture”—reduced the number of emergencies and placed the government as the sole body to act when an emergency occurs. After the amendment, the state of danger can be no more declared in “the event of a natural disaster or industrial accident endangering life and property,” but rather in the event of “a serious incident endangering life and property,” with natural disasters or industrial accidents being only examples of the latter. This change is more than a textual clarification since the government can now, in practice, react to any event seriously endangering the safety of life and property by means of this special legal order regime (i.e., it is not conditional on the occurrence of any event, since it can be introduced for purely preventive purposes as well). This amendment was intended to exclusively guarantee the government’s power over crisis management under the Fundamental Law. Naturally, such an amendment would be a clear enough sign of autocratization; as such, the legislature covertly passed this law by making other modifications concerning the “Special Legal Orders” chapter of the Constitution. Considering these “Special legal Orders” serve no other purpose than to cement the extraordinary power of the government.

After the Fidesz-Cristian Democrats coalition won the parliamentary elections on 3 April 2022, and got another two-thirds majority in the Parliament, the “new” government started to prepare the 10th Amendment of the Fundamental Law, which was accepted by the Parliament and entered into force on 24 May 2022. This amendment again reregulated the rules of the state of danger by adding that a “humanitarian catastrophe” or a “war in a

neighboring country” shall be a prerequisite for a state of danger. The amendment stated that before declaring a state of danger because of an armed conflict, war, or humanitarian catastrophe, it is vital that the exceptional situation in the neighboring country is real and could have a severe economic and humanitarian effect on Hungary. Although the wording of the new provision does not refer to economic impact, it can be easily understood that the emergency measures would be mainly economic-related restrictions. Even before the pandemic-related state of danger ended on 1 June 2022, the government declared a state of danger on 25 May 2022, using the new terminology. After the declaration, the Hungarian Parliament again gave the blanket endorsement for the government to rule by emergency decrees until 1 November 2022 by accepting Act VI of 2022 on Humanitarian Catastrophe in a Neighboring Country, which entered into force on 8 June 2022.

In response to the “humanitarian crisis,” the government has issued more than 200 emergency decrees, which include economic measures such as price controls, state control over certain companies, revised regulations on electricity, natural gas, and oil supply, and special measures on critical raw materials such as wood. Under the new state of danger rules framework, the practice of ruling by decree accelerated (Mészáros, 2024).

### 3 New enemies

#### 3.1 Threatening civil society through legislation

Emotional politics and populism are decisive motivations behind the Hungarian government’s political actions. These also affect the government’s verbal actions and are misused through so-called “national consultations.” Previously, I talked about the misuse of emergency powers, but the most politically relevant legislative actions were mainly preceded by political directives, which communicate hatred, uncertainty, and fear. Of course, the national consultation also legitimizes the government’s later actions instead of gaining real political support from voters during a democratic law-making process. One of the most relevant theoretical backgrounds of Fidesz’s politics is based on Carl Schmitt’s theory on the decision between friend and enemy (Schmitt, 2007). For the Fidesz government, throughout the last decade, finding an “enemy” to fight against was an easy task, and through populist techniques, they managed to get the relevant support from the voters for even legislative actions as well. Of course, these new acts or amendments of the Fundamental law not only served political benefits for the government—such as the amendment of the electoral law for parliamentary elections, which made it impossible for opposition parties to beat the government without coordinating with each other (Drinóczi and Mészáros, 2022)—but made possible to use these new measures against the civil society, most notably against the human rights NGOs and independent journals. For example, the Seventh Amendment of the Fundamental Law in 2018 (which was also supported by the far-right, nationalist Jobbik opposition party) banned homelessness. It brought further changes to the provision of the act, which had already allowed the criminalization of

homelessness in 2013. This amendment is just an example of how the government creates its enemies and uses laws against asylum seekers, migrants, and other vulnerable people (Drinóczi and Mészáros, 2022).

Recently, sexual minorities have already become another targeted “enemy” of the autocratic government. The already mentioned Ninth Amendment of the Fundamental Law, which entered into force on 10 November 2020, attacked those “non-traditional lifestyles,” such as single persons and LGBTQI people, by prohibiting them from family status. After this amendment, the constitution states that “mother is a woman; the father is a man.” It also declares that “Hungary protects children’s right to their identity in line with their birth sex, and their right to education according to the country’s constitutional identity and system of values based on Christian culture” (Dombos and Polgári, 2020). After the amendment, a new anti-LGBTQI law was also adopted in June 2021, which prohibited sexual reassignment for adults in official documents.

To strengthen its political power, the Hungarian government used “unorthodox” measures in relation to crisis management, as described in Section 2. By 2020, it became evident that the use of emergency powers, both constitutional (“state of danger”) and statute-based (“state of migration emergency”), became a practice to bypass constitutional checks on these powers. Therefore, the practice of “rule by decree” is a consequence of fighting against imaginary and real enemies, which clearly strengthened the government’s position during the parliamentary elections in 2022 and earlier (Drinóczi and Mészáros, 2022). For a healthy civil society, one of the most relevant rights is the freedom of assembly, more precisely, those rights related to “associative rights.” As Alexis de Tocqueville asserted in his epoch-making work, the right of association appears to be almost as inalienable in its nature as the right of personal liberty (Tocqueville, 2000). Some go further and state that this emphasized nature of the right can be explained by the power based on the association of individuals. As Hannah Arendt stated, “power is never the property of an individual; it belongs to a group and remains in existence only so long as the group keeps together (Arendt, 1972, p. 143).” Still, this power exists so long as the individuals stick together for the sake of civil society, but it could also be a decisive guarantee and an important control of political power. And if the right can be understood as a decisive factor to control the government, then autocratic governments could easily attack it. The term “associative rights” includes the rights to freedoms of petition, assembly, and association (Preuss, 2012); now, I will focus on the freedom of assembly. We are all aware, without a detailed explanation, that autocratic regimes tend to restrict those rights that help civil society, especially those motivations that can be dangerous for the government. This has happened with the right to assembly and the existence of human rights NGOs in Hungary during the last few years. Although it is very hard to divide these two processes as the main legislative restrictions affected civil society in general and the freedom of assembly in particular, I will analyze the two questions in separate subchapters to understand the situation better.

### 3.2 Attacks on NGOs

After the electoral victory in 2010, the Fidesz-led government has systematically undermined democratic values and attacked those independent institutions which could be dangerous for its autocratic ambitions. Of course, with a supermajority in the Parliament, using “legalism” to accelerate the backsliding of liberal constitutionalism (e.g., accepting a one-party constitution, amending the relevant acts on judicial independence, and packing the courts, overwriting the electoral rules which now seriously favors the current government, etc.) is a well-described process which is known as “autocratic legalism” (Scheppele, 2018), but there are independent institutions that can be described as “enemies.” Throughout the 13 years in political power, the Fidesz government constantly attacked Hungarian NGOs as well, which organizations defend by nature those values that tackle the automatizing government’s ambitions, such as the rule of law and human rights.

Some of these attacks on civil society and, most importantly, on NGOs included public statements by state officials, including the Prime Minister, stating that these organizations are serving opposition political parties and even foreign interests (Hungarian Helsinki Committee, 2017). In 2013, these organizations became the most relevant and symbolic enemies of the regime, and a widespread political campaign started in the government-friendly media (including the public service media) sources that George Soros (an American speculator who has Hungarian Jewish origin) was spending half a billion Hungarian forints on strengthening the Hungarian left-liberal opposition parties through NGOs (Eötvös Károly Policy Institute, 2014). One of the most remarkable events was when the Prime Minister, in the name of the Hungarian government, wrote an official letter to the Norwegian government, claiming that the amount delivered by the Norway Grants NGO Fund was distributed by a Hungarian NGO linked to the opposition party named “Politics Can Be Different” (Eötvös Károly Policy Institute, 2014). The measures used against NGOs have included state audits into the use of Norway Grants NGO Funds, criminal procedures, police raids against NGO members and their offices, and suspension of their tax numbers by the National Tax and Customs Administration (Eötvös Károly Policy Institute, 2017).

In April 2017, the governing party members submitted and the Parliament adopted the Bill on the Transparency of Organizations Receiving Foreign Funds (“Lex NGO”), which law prescribed that those organizations receiving foreign funds over a yearly threshold of 7.2 million Hungarian forints, would have to register at court and label themselves as “NGOs receiving foreign funds” on their website and in all their publications (Hungarian Helsinki Committee—Társaság a Szabadságjogokért, 2017). In case of non-compliance with the act, they could be fined by the state authorities (Eötvös Károly Policy Institute, 2017).

Of course, international organizations started to analyze the state of Hungarian NGOs. Most remarkably, the Venice Commission’s opinion, published on 20 June 2017, stated that the Lex NGO would cause disproportionate and unnecessary interference with freedoms: “while on paper certain provisions requiring transparency of foreign funding may appear to be in

line with standards, the context surrounding the adoption of the relevant law and specifically a virulent campaign by some state authorities against civil society organizations receiving foreign funding, portraying them as acting against the interests of society, may render such provisions problematic, raising a concern as to whether they breach the prohibition of discrimination ... (the law) will cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination (European Commission, 2017a).” A month after the Venice Commission’s opinion, 23 NGOs submitted a joint constitutional complaint to the Hungarian Constitutional Court, claiming that the Lex NGO violates several provisions of the Fundamental Law, most notably the right to private life, the right to assembly, the right to freedom of speech, and with regard to all the mentioned rights, on the prohibition of discrimination. However, the court did not conclude that the Lex NGO was unconstitutional.

The same year, the European Commission launched an infringement procedure for the law by concluding that it did not comply with the EU law because it interfered with fundamental rights—in particular, the right to freedom of association—and breached the Charter of Fundamental Rights of the European Union; it also introduced disproportionate and unjustified restrictions to the free movement of capital; therefore the law did not comply with the Treaty on the Functioning of the European Union. The Commission also expressed its concerns regarding the respect for the right to protection of private life and personal data (European Commission, 2017b). Later, in 2020, the Lex NGO was eventually found incompatible with EU law. The Court of Justice of the European Union stated that the Lex NGO unduly restricts the freedom of movement of capitals within the European Union and amounts to unjustified interference with fundamental rights, including respect for private life, protection of personal data, and the right to freedom of association, including the citizens’ right to participate in public life (Case C78/18, ECLI:EU: C:2020:476). Ten months after the ruling of the Court of Justice of the European Union, the Hungarian Government repealed the bill (Hungarian Helsinki Committee, 2021). However, the constant attacks on Hungarian NGOs did not end up with the decision of the European Court of Justice—as I will show later, not to mention that this legislation was also not the sole legal act against civil society.

### 3.3 The “Soros plan” and the effect of “permanent state of migration emergency”

The Prime Minister, on 18 September 2017, which was the opening day of the Parliament’s opening session, stated in his speech that the bureaucrats of Brussels were implementing the “Soros plan” and “feeding out of Soros’s hand.” In the same speech, he announced that a National Consultation—a public consultation form used by the Government several times, but the questions are worded to get the answers the Government wants—would be launched on this plan. The questions of the national consultation were already published in September. One of the questions mentioned two NGOs in a negative context as follows: “George Soros would also like to see migrants receive lighter sentences for the criminal offenses they commit. George

Soros supports organizations that assist immigration and defend immigrants who have committed unlawful acts with significant amounts of funds. One example is the Helsinki Committee, which argued with regard to the prohibited crossing of the border fence that applying strict legal consequences with regard to unlawful entry may be considered troubling. Another Soros-organization, Amnesty International, demanded numerous times that Ahmed H, the man who was sentenced for attacking with stones Hungarian policemen defending the border, is set free. Amnesty would even have the Hungarian state pay compensation. Do you support this point of the Soros plan? Yes/No (About Hungary, 2017).” After the national consultation and the politically motivated push on NGOs, a new package of bills was accepted by the Parliament on 20 June 2018, a bill that can be understood as a new version of the Lex NGO, called the Stop Soros legislative package. The new bill was accepted by the Parliament and entered into force on 1 July 2018. According to this bill, a new provision (Section 353/A) was implemented into the Criminal Code on “promoting and supporting illegal migration,” which threatens with prison those organizations that previously legitimately assisted asylum seekers or foreigners and aided these persons with professional support in order to protect their humanitarian values and the rights to fair procedure (Hungarian Helsinki Committee, 2018a). A few weeks later, the European Commission started an infringement procedure against the Hungarian criminal law, which threatens to prosecute and jail people who help migrants and asylum-seekers with legitimate means (Hungarian Helsinki Committee, 2018b).

This attack on asylum seekers and migrants started with a countrywide campaign and the already mentioned declaration of a quasi-emergency, the “state of migration emergency” in 2015. Before the Stop Soros package, the Parliament accepted the Seventh Amendment of the Fundamental Law, which incorporated the importance of the protection of Hungary’s constitutional identity (Drinóczi and Mészáros, 2022). This amendment, together with the “state of migration emergency,” “was a perfect lead-up to the introduction of the so-called Stop Soros legislative package.” Later, on 28 February 2019, the Hungarian Constitutional Court ruled that the criminalization of “facilitating illegal immigration—introduced by the so-called Stop Soros legislative package targeting human rights NGOs—does not violate the Fundamental Law” (Kazai, 2019).

The above-mentioned political campaign and the relevant acts corresponded well with the permanently maintained “state of migration emergency.” Of course, conflating migration, the Soros plan, and the work of human rights NGOs started much earlier. The first relevant event on this topic was the Prime Minister’s speech in its weekly radio interview on 30 October 2015. Here, Viktor Orbán said that the flooding in of migrants is enhanced by those activists “who support everything that weakens the nation states” and that the name of George Soros can best hallmark this Western way of thinking and network of activists. Orbán enforced this rhetoric in May 2016, when, in an interview, he stated that the organizations funded by George Soros are a “background power” that were not elected by anyone, but “they still constantly aim to gain political influence.” The same month, the former head of the Prime Minister’s Office, János Lázár, stated that the “entire domestic pro-migrant civil sector belongs to the sphere of influence of Soros,” which information, according to the minister came from

the Hungarian national security services. On 12 January 2017, one of the Fidesz MPs, Szilárd Németh, made a statement in which he declared that there are two types of NGOs in his view: the fake and the useful ones. He further added that the former have national security risks, aiding illegal migration and serving foreign powers' interests, a clear statement that mixed illegal migration and the threat of mass migration with the rights protection function of independent NGOs (Eötvös Károly Policy Institute, 2017). The problem of illegal migration under the framework of the state of migration emergency became a very effective political rhetoric for the illiberal government, not to mention that they finally found natural enemies in George Soros and human rights NGOs. In his annual State of the Nation speech on 10 February 2017, the Prime Minister said that "in 2017 we will also need to take up the struggle against international organizations" increasingly strong activists... It is a problem that foreign funding is being secretly used to influence Hungarian politics... the question is whether we should yield to covert foreign attempts to exert influence. We are not talking about non-governmental organizations fighting to promote an important cause but about paid activists from international organizations and their branch offices in Hungary. Are we going to do something to at least ensure transparency, and make these issues publicly known?... (The) transitional empire of George Soros, with its international heavy artillery and huge sums of money... (and) the organizations of George Soros are working tirelessly to bring hundreds of thousands of migrants into Europe. Later, in March, the government started to use the "migrant business" in the context of the NGOs' work, claiming that these organizations were part of foreign agent organizations operating with funds received from Soros. According to these statements, these NGOs help to bring illegal migrants to Europe (through Hungary) for billions of Hungarian forints. Still, these organizations encouraged illegal migrants to break the Hungarian rules, and this has led to the migration crisis in the country (Eötvös Károly Policy Institute, 2017).

In June 2020, the Hungarian government launched another national consultation on the "coronavirus and restarting the economy." The consultation contained more than 10 questions, including two concerning migration, which the government used to attack the Court of Justice of the European Union's decisions in 2020. The judgment concerned two asylum-seeking families held in the transit zone in Röszke, at the Hungarian-Serbian border. The court declared that a placement in the transit zone is, in fact, unlawful detention (Hungarian Helsinki Committee, 2020). The two questions were the following: "According to a European Court of Justice ruling, it is illegal to have immigrants wait in the transit zone on the Hungarian border. The decision found that migrants should be allowed entry into our country during the epidemic. This ruling coincides with George Soros's old plan on migration, which proposed that one million immigrants must be allowed entry annually and at any cost. Do you agree that the government should continue to stand up against immigration and maintain strict protection of Hungary's borders?" and "Brussels is preparing an offensive against the immigration-related regulations of the Hungarian constitution. They want to force us to amend the Fundamental Law's articles that prevent migration. Do you agree that the Hungarian government must insist on its anti-immigration

rules even at the price of an open conflict with Brussels? (Hungarian Helsinki Committee, 2023b)." However, the government's attack on George Soros, migration, and NGOs hasn't finished here. During the summer of 2021, another national consultation was conducted; according to the government, the main reason was to survey the opinion of the people about the emergency restrictions regarding COVID-19, which are still in force in the country. Nevertheless, this questionnaire included several questions concerning migration, not to mention that it has become the central element of the communication that after the pandemic, the NGOs, funded by George Soros, again would start to support illegal migration and attack the country. Such question was the following: "After the pandemic, George Soros will again attack Hungary because Hungarians are against illegal migration. Some say the pressure exerted by the Soros organizations must be resisted, while others think Hungary needs surrender in the migration debate." The two possible answers were: "Hungary must not yield to the pressure exerted by the Soros-backed organizations." or "We need to give in to the migration dispute (Hungarian Helsinki Committee, 2023b)." As these consultations show, the Hungarian autocratic regime did not simply maintain the state of migration emergency for 8 years. Still, it used migration as one of the most successful political weapons against so-called enemies.

### 3.4 Prohibiting the freedom of the right to peaceful assembly under the state of danger

Before the COVID-19 pandemic, the autocratic government in Hungary had already realized the threat to civil society through the freedom of assembly. Although the Fundamental Law of Hungary, similar to almost all constitutions in the world, declares that everyone has the right to freedom of peaceful assembly, including and defending those demonstrations expresses critics against the government's policy. In 2018, the Seventh Amendment of the Fundamental Law changed the rules of family and private law but also restricted the freedom of expression and assembly. The antecedent of this amendment was a demonstration in front of Prime Minister Viktor Orbán's house. After the amendment, the Hungarian constitution restricts the freedom of assembly by stating that exercising this right shall not violate private and family life and the right to home (Drinóczi and Mészáros, 2022).

After the outbreak of the COVID-19 pandemic, almost all European countries introduced various rights restrictions, including the right to freedom of assembly, in order to prevent the spread of the virus. Still, the freedom of assembly is an essential cornerstone of democracy; according to the European Parliament's resolution in November 2020, the majority of EU Member States introduced restrictions in relation to this right—especially those countries that declared a state of emergency to handle the threat—due to social distancing rules and public health precautions. Just a minority of EU member states have decided to allow assemblies in compliance with social distancing rules (The European Parliament, 2020). However, among the COVID-related restrictions, the Hungarian government's emergency decrees on

the general ban on the right to assembly can be understood as the most springless and most rigid measure that lasted for a year, and even after the end of the pandemic, some of these measures were still in effect. On 17 March 2020 (lasted until 23 May 2021), the government issued an emergency decree based on the authorization of the state of danger, which introduced a general ban on the right to assembly. This general restriction covered the whole territory of Hungary without any exceptions. The law hadn't differentiated between a downtown or an open place, including all assembling from a meeting between at least two persons—according to the relevant act, the definition of assembly needs at least two persons—until mass demonstrations. The general ban on freedom was not simply rigorous, but this wide range of restrictions was unparalleled in the continent as well (Kádár and Farkas, 2023). According to the Hungarian Constitutional Court's earlier decision on freedom, a general ban means the total distraction of the right instead of proportional coercion; therefore, it is supposed to be unconstitutional [30/2015 (X.15.) HCC judgment]. Of course, under a state of emergency regime, ordinary proportionality tests could not be used in their entirety. Still, the total and general prohibition of freedoms can be understood as an unnecessary abstraction of the right. This meant that even those assemblies that followed other European practices and were not prohibited in other countries—such as was the deployment with cars and expression of opinion by using the car's horn— forbidden by the state authorities based on the idea that even these “assemblies” would support the spread of the epidemic. Ironically, using someone's own car to do the daily shopping was not prohibited these days. During the second wave of the pandemic, the government maintained the general prohibition on the right to assembly; however, it made exceptions, such as the religious ceremonies—by declaring that these events cannot be understood as assemblies—, sports events without supporters on the stands, family meetings up to 10 persons and funerals up to 50 persons. Even before lifting the general ban on assemblies, the government allowed shopping in supermarkets (so in indoor places), opened the terraces of restaurants and pubs—without the obligation to wear face masks—and gave the opportunity for schools to organize graduating ceremonies without using any restrictions on the numbers of participants or social distancing requirements (Kádár and Farkas, 2023). In the meantime, those who wanted to express their opinions on various political, economic, or social issues—including the resistance against the government's efforts in handling the emergency—were prohibited from doing that.

Under these circumstances, two Hungarian NGOs (Rainbow Foundation and the Hungarian Helsinki Committee) planned to organize a demonstration on 10 December 2020 to protest against the—already mentioned—Ninth Amendment of the Fundamental Law and those acts based on this amendment. According to the human rights NGOs, this amendment and the relevant acts discriminate against those who belong to the LMBTQI sexual minorities. The organizers asserted that the demonstration would be held in accordance with the relevant social distancing prescriptions, the number of participants would be maximized to 30 persons, and all of them would be driving their own cars without the possibility of personal interactions. Under the framework of the general ban, the relevant authorities refused the permission and referred to the relevant emergency rules without using any

proportionality tests. One of the NGOs applied for legal remedy, and the Kúria (the Supreme Court of Hungary) declared, with its plain decision, that the police were correct to refuse the assembly, and the decision made by the state authorities was lawful. The Rainbow Foundation appealed against this decision and claimed that Kúria's reasoning and the applied emergency decree were also unconstitutional and filed a constitutional claim to the Hungarian Constitutional Court. Although the applicants asked for urgency regarding the decision, the court waited for months until the government repelled the relevant emergency decree, so there was no effective judicial remedy to protect the right. In its judgment delivered on 13 July 2021 (Case No. 23/2021), the court accepted that there is no room for questioning the government's action in a state of exception and if the government, which is in a better place to decide which emergency measures are rational under a crisis, thinks that the general prohibition of exercising a right is required to handle the threat, than the court it is not in place to decide the unconstitutionality of these emergency rules (Kádár and Farkas, 2023). This attitude of the court during an emergency is not unique in constitutional theory and is described as “judicial deference.” Still, this judicial attitude has developed case law, especially in Anglo-Saxon countries (Wagstaff, 2013). Whereas, in Hungary, this further helped the autocratization process of the country instead of defending the civil society against this motivation of the government.

The Hungarian government misused emergency powers and maintained its rule of decree practice. Still, throughout the year 2022, they used these powers against resistance based on the deteriorating conditions in the public education system, which led teachers, students, and parents to demand changes and organize demonstrations. In early 2022, the majority of the teachers' unions began organizing strikes and protested against the centralization, the low salaries, and the continuously growing workload. Instead of discussing the issue with those involved, the Government issued an emergency decree—in accordance with the war in Ukraine, which has nothing to do with the students' and teachers' rights—which emptied out the right to strike. In response, the teachers turned to civil disobedience, which resulted in retributive dismissals during the autumn. In January 2023, the Government again issued a decree that created a framework where teachers couldn't know the consequences of their civil disobedience actions until the end of the academic year (Hungarian Helsinki Committee, 2023a).

### 3.5 Defending Hungary's sovereignty

After the politically relevant defeats in recent years in front of international legal and political forums, such as the European Court of Justice or the European Commission, the Fidesz government, soon after the electoral victory, started its new campaign against civil society. This time, the NGOs were blamed that they are serving foreign interests and threatening national sovereignty. Of course, this time again, those NGOs labeled as “enemies” carry out human rights watchdog and anti-corruption activities and, therefore, aim to defend the rule of law and democratic principles in the country. On 18 May 2022, Máté Kocsis, one of the most important MPs of the Fidesz fraction in the Parliament in the

Committee of the Parliament on National Security stated, that “there are NGOs involved in Hungarian domestic politics that are funded from abroad and yet carry out their domestic political activities here, or there are media outlets that are clearly in the service of foreign countries. Identifying these, or at least being aware of them, will be essential if we are to talk about the defense of sovereignty.” Kocsis, in his later interview on 13 June 2022 asserted that there is a clear and present danger from NGOs and media on national security by quoting: “This is a suggestion that came up back in 2018 in connection with the ‘Stop Soros’ legislation. And we are serious about it too—namely, that organizations which are being financed by money from foreign governments and this is an important detail: using money received from another state to acquire political influence in Hungary which is not based on democratic legitimacy needs to be examined. This is a simple matter of protecting Hungary’s sovereignty.” The Head of Cabinet of the Prime Minister, Antal Rogán—who is also responsible for national security—during his hearing before the Committee of the Parliament on National Security further added: “A national security risk means that if someone harms Hungary’s interests, national security is endangered. [...] The same applies if someone engages in activities that are contrary to the interests of the country and its people in matters that threaten the simple interests of the Hungarian people, their physical security, material security or energy security, this is violation of national security ([Hungarian Helsinki Committee, 2023b](#)).”

As the earlier examples showed, after the political rhetoric and the enemy creation by leading politicians of the Fidesz party, a new bill ought to arrive. According to the defense of Hungary’s sovereignty the same method went through and on 21 November 2023, the leader of the Fidesz parliamentary group filed a new package of laws that are labeled “defense of sovereignty.” The new bill was already adopted by the Parliament on 12 December 2023, and can be understood as the new anti-NGO bill. According to the act’s preamble, the aim of the legislation is to defend Hungary’s sovereignty, which is damaged and also poses a major national risk. The reason behind this—according to the preamble—is that foreign organizations and individuals seeking to assert their own interests in Hungary, in opposition to Hungarian interests and rules, have attempted to exert influence. It also states that the 2022 parliamentary election campaign has already been influenced by direct foreign funding and refers to the relevant national security investigation. Although the Hungarian law prohibits parties from accepting foreign funding, but—as the bill states—united opposition circumvented this rule by using funds from abroad through NGOs. So, the official aim of the new act is to prevent similar cases because Hungary’s sovereignty would be damaged if political power was in the hands of organizations and individuals that are dependent on any foreign power. Of course, unlike the official explanations, the new bill is a “regime defense law” that aims to shield the “government’s arbitrary exercise of power ([Hungarian Helsinki Committee, 2023c](#)).” The new bill created an Office for the Defense of Sovereignty (Office) with an extremely wide sphere of authority. The Prime Minister appoints the office president, and the Office can target any organization or person suspected of serving foreign interests. The authority of the Office contains the powers to obtain

unhindered access to sensitive data, and—according to the Fidesz faction leader’s comments—one of the most critical future targets will be the independent NGOs. Once initiated, the investigations could quickly end up in criminal procedures, whereas no legal remedies against the process are included in the bill ([Hungarian Helsinki Committee, 2023c](#)).

## 4 Conclusion

In times of crisis, cross-sectoral cooperation between the civil society and the government is crucial. Of course, this cooperation is based on the idea that the government and the civil sector have the same aims: alleviating difficulties and resolving people’s problems ([Simo and Bies, 2007](#)). However, The Hungarian government relied on its own measures and used various crisis situations to strengthen its political power and weaken the civil society. As the latter can be understood as an important control on arbitrary power, using a state of emergency to tackle independent NGOs is a crucial authoritarian practice. As we can see, the Hungarian government not only misused its emergency powers against civil society but always found a way to maintain political pressure on independent organizations regardless of the crises. Moreover, creating enemies—and the most important enemies soon became the independent NGOs—was not the only authoritarian practice that should be mentioned in accordance with the Hungarian authoritarian regime. Before creating enemies, creating crises is also a unique element of the Hungarian example. After the mass migration crisis in 2015, the government modified the relevant rules on asylum seekers. It included the new “state of migration emergency” into the text of the act and created an emergency regime outside the Fundamental Law’s emergency chapter. By constantly upholding this emergency, the government not only ensured emergency powers for itself but used the “migration emergency card” against human rights NGOs as well.

Following the importance of the sovereign decision, Carl Schmitt stated that the jurisprudence must focus on “ordinary day-to-day questions.” Still, the exception is different. The exception is characterized by “unlimited authority, which means the suspension of the entire existing order ... the state remains, whereas law recedes” in these situations. Moreover, the state’s decision “frees itself from all normative ties and becomes, in the true sense, absolute. The state suspends the law in the exception on the basis of its right of self-preservation... ([Schmitt, 2005](#)).” The sovereign makes the decision, so in Schmitt’s understanding, the sovereign may decide to suspend the legal order to deal with the exception. This political idea of the German legal theorist found its way into the Hungarian government’s understanding of politics. The effect of the Schmittian interpretation of emergencies is extraordinary in Hungary’s legal rules and serves the aim of the “sovereign.” Now, instead of the detailed regulation, it seems that responding to an emergency is more a political rather than a legal question. This political decision is based on the presumption that possible emergencies need the decision of the “political,” which can be described as a political distinction between friend and enemy ([Schmitt,](#)



2007). Maintaining a permanent state of emergency together with creating enemies, the Hungarian authoritarian regime enjoys the benefits of unlimited sovereign power. Building on the rhetoric that NGOs and members of civil society are paid by foreign powers to serve their interests led to the new “defending sovereignty” legislation, which further restricts the leeway of these organizations.

## Data availability statement

The original contributions presented in the study are included in the article/supplementary material, further inquiries can be directed to the corresponding author.

## Author contributions

GM: Writing – original draft, Writing – review & editing.

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## Funding

The author(s) declare that no financial support was received for the research, authorship, and/or publication of this article.

## Conflict of interest

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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