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Covid-19 and the Rule of Law ***WG9: Rule of Law and Public Administration*** ***29th NISPAcee Annual Conference***

Abstract

All political systems grant exceptional authorisations to the executive branch of power in times of crisis, because the new and fast-changing challenges cannot be addressed within the normal legislative framework. Even Alexander Hamilton, one of the American founding fathers who otherwise dreaded the excessive power of central government, was of the opinion that the system of checks and balances had to be suspended in emergencies. A constitutional democracy is only endangered if the rule of law is not restored after the end of the extraordinary situation.

The constitutional significance of a special legal order involves a limitation of fundamental rights that is unusual and unacceptable under normal circumstances. By the strong centralisation of executive authorisation, a special legal order changes the procedures of exercising power, introducing a sort of “constitutional dictatorship”. This is justified by grave social and economic events in a certain period when special powers are bestowed upon government authorities, to be exercised under constitutional control, temporarily, proportionately, and for specific purposes. Section 54 of Hungary’s Fundamental Law (Constitution) stipulates that certain fundamental rights and the Fundamental Law itself cannot be suspended through a special legal order. These fundamental rights include the right to life and human dignity, the prohibition of torture, the presumption of innocence, the right to defence, the prohibition of retroactive punitive justice, or the *ne bis in idem* principle.

The Covid crisis has so far been the toughest test of the stress resistance of a political system, and also of the protection of fundamental rights by the constitutional rule of law. The crisis can be successfully managed in countries where the state is strong and has the capacities to resolve the emerging issues; in countries that are governed effectively and competently, with citizens who trust public institutions.

In my presentation, I will review the constitutional debates about the introduction of a special legal order, and examine the crisis management capabilities of Hungary’s government.