

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# HUNGARY: GOVERNMENT MUST NOT USE EXTRAORDINARY POWER TO ROLL BACK HUMAN RIGHTS AMID COVID-19 EMERGENCY

Amnesty International is deeply concerned that the Hungarian government may introduce extraordinary measures by decree that are not necessary and proportionate to resolving the current public health emergency and violate human rights. The new law (*Bill on Protection against the Coronavirus* or [Bill T/9790](#)), adopted yesterday by Parliament, extended the government's power to rule by decree<sup>1</sup> by absolving it from parliamentary scrutiny and did so without providing a clear cut-off date.

The new law also details two forms of crimes related to the COVID-19 crisis, that might be used disproportionately to curtail the rights of individuals and organizations critical of the government. By amending the Criminal Code concerning the crime of 'impairing or conveying false information',<sup>2</sup> anyone who publicizes false or distorted facts that interfere with the "successful protection" of the public or might alarm or agitate the public could be punished by up to five years in prison. In addition, as a new crime, any person who obstructs the enforcement of a quarantine or isolation order could be sentenced to up to three years in prison – or up to five years if the person commits the crime as part of a group – a punishment that increases to eight years if anyone dies as a result.

Amnesty International is calling on the Hungarian government to ensure that human rights remain central to all measures designed to prevent and contain the COVID-19 pandemic and guarantee that measures introduced are subject to sufficient oversight by both the legislature and the courts.

## SPECIAL MEASURES IN STATE OF EMERGENCY DO NOT MEAN BLANK RESTRICTION OF HUMAN RIGHTS

Amnesty International acknowledges that Hungary has an obligation to protect and guarantee the right to health for everyone without discrimination, and to take urgent measures necessary to combat the COVID-19 pandemic. The organization also recognizes that Hungary knows best what type of public health measures are required to promptly meet the above aim. Moreover, Amnesty International acknowledges that, under international and regional human rights law and domestic legislation, Hungary can impose restrictions on certain human rights to protect public health and safety.

The International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), which Hungary is party to, stipulate that measures Hungary can take to derogate from some of its human rights obligations in a time of public emergency threatening the life of the nation. Derogations shall not exceed "the extent strictly required by the exigencies of the situation"<sup>3</sup> provided that such measures are not inconsistent with Hungary's other international human rights obligations.

In particular, Hungary should not in any circumstance restrict certain fundamental rights, including the right to life, prohibition of torture or other cruel, inhuman or degrading punishment, the recognition before the law and the presumption of innocence<sup>4</sup>. The principle of legality and the rule of law mean that fundamental requirements of a fair trial must also be respected during a state of emergency, including the right to counsel.<sup>5</sup> Moreover, any restrictions imposed on certain human rights in times of emergency shall not be discriminatory on the ground of race, colour, sex, language, religion or social origin.<sup>6</sup> Concerning its obligations under the International Convention on Economic, Social and Cultural

<sup>1</sup> As per Article 53 of Hungary's Fundamental Law, the government has a right to rule by decree in a 'state of danger', which is a form of state of emergency in the Hungarian legal system.

<sup>2</sup> Article 337 of Act C of 2012 on the Criminal Code, available at: <https://net.jogtar.hu/jogszabaly?docid=A1200100.TV#IbjOid860a>.

<sup>3</sup> Article 15 of the ECHR.

<sup>4</sup> Besides the above mentioned rights, Article 4(2) of the ICCPR explicitly refers to the following rights from which no derogation may be made: prohibition of slavery, slave-trade and servitude (Article 8), prohibition of imprisonment because of inability to fulfil a contractual obligation (Article 11); principle of legality in the field of criminal law, i.e. clear and precise provisions and no retrospective laws (Article 15); freedom of thought, conscience and religion (Article 18); and prohibition of the death penalty for states party to the second Optional Protocol.

<sup>5</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11, paras. 11 and 16., available at: <https://www.refworld.org/docid/453883fd1f.html>. (HRC, CCPR General Comment No. 29)

<sup>6</sup> Article 4(1) of the ICCPR.

Rights, Hungary must comply at all times with its minimum core obligations concerning rights under the Convention while dealing with the current public health emergency.

According to the Fundamental Law (Hungary's Constitution), the so-called 'state of danger'<sup>7</sup> (a form of state of emergency in the Hungarian law) announced by the government to combat public health emergencies (or other emergency situations), grants particular privileges to the executive branch. This law also permits restrictions on certain rights in a 'state of danger', with the exception of non-derogable rights.<sup>8</sup> Moreover, under the new law, the government can suspend the application of any law beyond those specific regulations stated in Act CXXVIII of 2011 on the management of natural disasters and amending certain related acts<sup>9</sup> that covers epidemics.

Amnesty International calls on the Hungarian government to ensure that any measures introduced to combat the COVID-19 epidemic are carefully assessed to ensure that they are necessary and proportionate actions, required by the public health emergency. The organization also urges the government to refrain from curtailing human rights, including the right to freedom of expression of those who are attempting to hold the government to account – in particular media and civil society organisations, under the pretext of combatting the current health crisis.

## **NO SUNSET CLAUSE FORESEEN TO THE STATE OF DANGER AND TO THE EFFECT OF GOVERNMENT DECREES**

The new law has granted the government an open-ended mandate to govern by decree and extended the ability of both this mandate and the effect of the decrees indefinitely. Under international and regional law, a state of emergency that requires a derogation from certain obligations, must be limited in circumstance, scope and duration.<sup>10</sup> On this basis, the Hungarian government may exercise extraordinary powers and keep the state of emergency in force only for as long as it is strictly necessary to contain the epidemic. Moreover, Hungary is also required to periodically examine whether the public health situation due to the COVID-19 pandemic still justifies the state of emergency, and whether the measures put in place to contain the virus can be modified or withdrawn entirely.<sup>11</sup> The decision on renewal or extension should not be left solely to the executive, but the procedure should allow for meaningful scrutiny and challenge, be that by the court or the legislature. However, the newly adopted law is in clear contradiction of this above requirement.

In line with the above, under the Fundamental Law, any measures that the government orders by decree during a 'state of danger' should be in effect for an initial period of 15 days, after which a parliamentary mandate must be sought for further extensions.<sup>12</sup> Moreover, the law requires that all emergency decrees expire once the crisis and with that the 'state of danger' are over. The new law that was passed yesterday, however, bypasses those legal safeguards of the Fundamental Law, enabling any government decree adopted in this period not to lose its effect once the COVID-19 emergency and the state of danger are over.

## **NEW EXECUTIVE POWERS SHOULD NOT MEAN BYPASSING CONSTITUTIONAL OVERSIGHT**

Amnesty International is concerned that the bill allows the government to bypass parliamentary scrutiny. International and regional law, however, in no circumstances allow the Hungarian government or any national governments to act without constraint or to unilaterally exercise power. According to the Parliamentary Assembly of the Council of Europe, "fundamental safeguards of the rule of law, in particular legality, effective parliamentary oversight, independent judicial control and effective domestic remedies, must be maintained during a state of emergency"<sup>13</sup>.

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<sup>7</sup> The 'state of danger', a form of state of emergency in Hungarian legislation, is a so-called special legal order defined in the Fundamental Law of Hungary, which allows the government to introduce extraordinary measures by decree and order the suspension of the application of certain laws or the aversion from legal provisions in order to solve the emergency. Section 53(1) and (2) of the Fundamental Law.

<sup>8</sup> Article 54 of the Fundamental Law.

<sup>9</sup> The list of specific laws the government can suspend or avert from are listed in Act CXXVIII of 2011 on the management of natural disasters and amending certain related acts (2011. évi CXXVIII. Törvény a katasztrófavédelemről és a hozzá kapcsolódó egyes törvények módosításáról), Subchapters 21-24., available at: <https://net.jogtar.hu/jogszabaly?docid=A1100128.TV>.

<sup>10</sup> HRC, CCPR General Comment No. 29, para. 4.

<sup>11</sup> Parliamentary Assembly of the Council of Europe (PACE), Resolution 2209 (2018): *State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights*, adopted on 24 April 2018, para. 19.4., available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24680&lang=en>. (Resolution 2209 (2018) of the Parliamentary Assembly)

<sup>12</sup> Article 53(3) of the Fundamental Law.

<sup>13</sup> Resolution 2209 (2018) of the Parliamentary Assembly, para. 3.

In addition, the European Court of Human Rights stated that, in the context of an emergency, it is also for the national courts to scrutinise emergency measures by the executive and to assess the proportionality between measures taken and the nature of the threat posed by the emergency.<sup>14</sup>

Hungary's Fundamental Law stipulates that during a special legal order, constitutional oversight must be maintained, and Parliament shall still fulfil its functions.<sup>15</sup> It also states that the Constitutional Court shall act as counterbalance to the government. In the current situation, when Parliament is no longer able to oversee the government's actions, it is of high importance to enact additional measures to enable the Court to swiftly and effectively assess if any decisions concerning the state of emergency or any individual measures taken thereunder are constitutional, and in compliance with Hungary's international obligations under human rights law. As recommended by a [joint statement](#) of the Hungarian Helsinki Committee, the Civil Liberties Union, Eötvös Károly Institute and Amnesty International Hungary, those measures should include, among others:

- An extension of the scope of persons eligible to initiate an abstract constitutional review procedure by the Constitutional Court to include any members of Parliament, or at least the head of parliamentary groups.<sup>16</sup>
- The shortening of the deadlines for the Constitutional Court to make in-merit decisions about petitions regarding the special legal order and any measures related to the special legal order.

Amnesty International urges the Hungarian government to adopt a human rights-based approach in combating the COVID-19 pandemic in respect of the rule of law and ensuring the constitutional oversight of its actions.

## BACKGROUND

On 20 March 2020, the Hungarian government submitted the *Bill on Protection against the Coronavirus* (Bill T/9790) to Parliament, seeking parliamentary authorisation to extend the effect of the government decrees beyond what is permitted by the Fundamental Law without parliamentary control. On 23 March, Parliament did not allow an urgent vote on the Bill to go forward the next day (that would have required a four-fifths majority of MPs). Yesterday, on 30 March, the Bill was approved by a constitutional two-thirds majority in Parliament, secured by the governing Fidesz party.

The law that follows the government decree proclaiming the 'state of danger' starting from 11 March 2020<sup>17</sup>, entered into force at midnight yesterday, 30 March 2020.

Since its submission for parliamentary debate, the new law has triggered domestic outcry, including civil society organizations protesting against the bill in the [joint statement](#) mentioned above, over a hundred thousand people signing an [online protest letter](#) and thousands watching an [online protest](#). The bill has also received international criticism, including from the Human Rights Commissioner and the [Secretary General of the Council of Europe](#), the [Civil Liberties Committee of the European Parliament](#), the [Media Freedom Representative of the Organization for Security and Cooperation in Europe \(OSCE\)](#), [Reporters Without Borders](#) and [Human Rights Watch](#).

The Hungarian government has a track record of restricting rights and freedoms. Over the past years, it has extended its control over the media and the judiciary and other independent bodies and continued to silence dissent and intimidate individuals and organizations attempting to hold the government to account. This extraordinary power without adequate constitutional oversight could enable it to further roll back human rights under the pretext of containing the COVID-19 virus and protecting public health.

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<sup>14</sup> A and others v. UK, paras. 173-4, 184.

<sup>15</sup> Article 1(2)(e) and 48(7) of the Fundamental Law.

<sup>16</sup> As permitted under Article 24(2)(g) of the Fundamental Law.

<sup>17</sup> Hungary, Government Decree no. 40/2020, 20 March 2020, pp.5., available at: <https://net.jogtar.hu/jogszabaly?docid=A2000040.KOR&searchUrl=/gyorskereso%3Fkeyword%3Dvesz%25C3%25A9lyhelyzet>.