



SPOTLIGHT

No. 19, 25 March 2020 © PISM

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Legal Changes in Hungary Due to the Coronavirus Pandemic

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In connection with the coronavirus pandemic, the Hungarian government intends to extend indefinitely regulations adopted under a “state of danger” declared on 11 March. The bill authorising it to do so would give the government unprecedented powers, including limiting constitutional freedoms. The vote on the bill is scheduled for 31 March. Adoption requires a two-thirds majority, which means that the ruling party can adopt it alone.

What is a “state of danger” and what powers does it give the government?

A “state of danger” is one of a few extraordinary times defined by the Constitution of Hungary of 2011 when a special legal order applies. It is declared by the government “in the event of a natural disaster or industrial accident endangering the safety of life and property, and to mitigate their consequences”. Only the government can lift the “state of danger”. During this period, the government may adopt decrees to suspend the application of existing regulations and adopt any further extraordinary measures. Since the announcement of a “state of danger” in connection with the pandemic, the government has adopted regulations similar to other EU Member States. These legal acts remain in effect for 15 days, but the government, by the authority of the parliament, may extend the period. Such authorisation is provided in a bill scheduled for a vote on 31 March.

What is in the bill proposed by the government?

The draft bill submitted to parliament on 21 March on combating the spread of the coronavirus aims to extend the effect of extraordinary decrees—both existing and ones that may be adopted in the future—for an indefinite period. In practice, this means that the government would be able to adopt laws that conflict with applicable law, without control of the legislature, and without thematic and time restrictions because it is the government’s sole right to lift the “state of danger”. The draft also includes amendments to the penal code. The new provisions, among other changes, allow punishment by imprisonment from one to five years for “publishing false information or falsely presented facts that may limit the effectiveness of activities related to combating an epidemic or prevent such activities”.

What is the reaction of the opposition parties?

The opposition is mainly concerned by the lack of a specified timeframe for the government to have these exceptional powers. The opposition wants to include in the bill the maximum period for which the parliament authorises the government to use the special legal order (e.g., the left-wing Democratic Coalition proposes 15 days, the liberal Momentum 30 days, the green Dialogue 90 days). They also have drawn attention to the need to allow heads of parliamentary caucuses to apply to the Constitutional Court to examine the constitutionality of the government's activities during this period and to work out a way of remotely voting in the event of the impossibility of convening parliament due to the pandemic. They consider the proposed tightening of the penal code unnecessary. During the parliamentary debate on the bill on 23 March, Prime Minister Viktor Orbán announced that the government will not give up any of the proposed provisions.

What legal doubts do the changes raise?

Some lawyers have doubts about the legal basis for declaring the “state of danger”—they question, under applicable law, the recognition of the pandemic as a natural disaster. They also believe that the existing Health Protection Law provides authorities with sufficient powers to effectively combat epidemics/pandemics. So far in Hungary there are relatively few reported infections compared to other countries in the region (as of 24 March, 187 confirmed cases, including nine deaths). Lawyers point out that the introduction of a “state of danger” can be used to limit the rule of law under the pretext of effectively preventing the pandemic, e.g., in the form of an unjustified limitation of the functioning of parliament or freedom of expression. The unclear wording of the amendment to the penal code—“limiting the effectiveness” of the authorities' actions by informing the public—leaves the authorities with too much freedom to determine who is subject to the penal changes and in what situation.

How will EU institutions react to the law?

The adoption of the law on combating the spread of the coronavirus will be in line with the Hungarian constitution. For this reason, and due to the priority of the European Commission regarding the need to counter the pandemic, it is unlikely that the EC will trigger a procedure to examine the compliance of the bill with EU law. The interest of European public opinion will also be weaker due to the dominance of the subject of epidemics/pandemics in the public media space. The reactions of EU institutions will depend on how the government applies its powers, especially if it uses them to limit constitutional freedoms of citizens or to change legal regulations not directly related to combating the epidemics.