



Policy Alert Hungary

An early balance of emergency measures in Hungary

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Emergency measures have been widely adopted across Europe in the context of the ongoing Covid-19 pandemic in order to facilitate rapid and effective decision-making and action to fight the spread of the virus. While such measures can be justified under such extraordinary circumstances, they should always be proportional and temporary in nature. Measures taken by the Hungarian government, especially its law “On protecting against the Coronavirus” adopted on March 30, have been widely criticized for failing on both accounts, resulting in unlimited power for the Hungarian government to rule by decree. International and domestic criticism has been refuted by the Orbán government, but drawing a balance on its actions during the first few weeks after the adoption of what critics have dubbed an “empowerment law” provides a worrisome picture.

Ruling by government decrees during the “state of danger”

In response to the pandemic, the Hungarian government declared a “state of danger” on March 11. Under this specific form of emergency legal order, the government can govern by decree in specific areas identified in Hungary’s law on disaster management. The Fundamental Law, Hungary’s constitution, envisions that this legal order would be invoked in regard to natural disasters such as floods, and correspondingly allows for emergency measures to be taken in a limited field of action. Furthermore, the Fundamental Law stipulates that while the government is authorized to respond to the situation that prompted the special order without involving the parliament, the latter’s approval is needed to extend government decrees beyond an initial fifteen-day period.

With the adoption of the [law “On protecting against the corona virus”](#) on March 30, facilitated by the governing parties’ two-third majority in the legislature, the need for parliamentary approval to prolong the effect of decrees beyond fifteen days was lifted in regard to already adopted as well forthcoming government decrees. The scope of potential government decrees was expanded to include the amendment or suspension of any and all existing legislation by decree, as well as the adoption of any new measures as long as they are argued to serve the management of the crisis. Consequently, any decree passed by the government remains in force without any clear end date, until the state of danger is revoked. The law leaves the right of revocation with the government but puts the power to revoke the indefinite prolongation of decrees granted by the law into the hands of the parliamentary majority. While on paper it might appear to empower the parliament, in practice the governing parties’ majority is no check on the government. Simultaneously, the ban on (national and/or local) by-elections introduced by the law ensures that the composition of the parliament is not altered during the state of danger.¹ Note that if the parliament revoked the empowerment provided by the law, it would not end the state of danger itself. In that case, the earlier regulations regarding the special legal order would apply.

Impact on media and freedom of speech

Beyond its effect on government decrees, the law introduced amendments to the criminal code providing penalties up to three years in prison for stating or spreading a falsehood or distorted truth

¹ The law talks specifically about by-elections. The next regular parliamentary elections are scheduled for 2022 and local elections for 2024.



in relation to the emergency that may alarm or agitate a large group of people at the site of the emergency, and up to five years if such statements may obstruct or prevent the success of protective measures. The effect of this amendment to the criminal code is not tied to the state of danger and will remain in force regardless of it. Moreover, it concerns not only the current crisis but any emergency situation. Given the current public climate, the government's recurring verbal attacks on and accusations against independent journalists, and the calls of pro-government pundits' to have such journalists silenced, the amendment has been widely perceived as a potential tool to neutralize critical voices, foster an environment of fear and uncertainty to hamper their work, and infringe on their freedom of expression. As of yet, the amendment has not been put into play against journalists, but its ambiguous wording fuels such concerns, and journalists have already [reported](#) increasing hostility and difficulties regarding reporting.

Journalists have already been operating in a shrinking space in general and concerning reporting on the crisis in particular. While the government introduced daily press conferences of its so-called Operational Group responsible for crisis management to communicate developments to the public, these pressers soon moved online due to health concerns. Journalists must now submit questions in advance via email. As a result, the overwhelming majority of the questions answered are from pro-government outlets, and independent media have no real room to pressure the government for real answers on contested measures and topics. The current setup structurally hampers access to information.

Infringement of data privacy

Additionally, concerns regarding access to information have been raised in concrete cases, too. Among these, notable was the government's initial refusal to publish data on the regional distribution of identified infections. Initially, the Operative Group refused to share the information arguing privacy concerns – although journalists were asking for statistical data only. The Operative Group, however, contradicted its own argument regarding privacy when it published information on the deceased that omitted their names but disclosed their age, gender, and existing health conditions. Considering that the initial set of information was released at a stage of the crisis when individual deaths were still discussed widely in the media, it was possible to identify certain individuals and learn sensitive private information about their health. As this publication of personal data clearly infringed on citizens' rights, the Hungarian Civic Liberties Union [suggested](#) alternate ways of communicating relevant data to the public, but these recommendations were disregarded. The practice continues unchanged. In the meantime, regional-level statistical data was made [available](#) on the identified infection cases.

While the Operative Group has not led with a good example in responsibly handling citizens' sensitive data, this is not the only development that raises concerns about government practices. The [Eötvös Károly Institute](#) has called attention to further potentially problematic decrees. Under the 46/2020. (III.16.) government decree adopted on March 16, the Minister for Innovation and Technology can, in the interest of crisis management, gain access to and manage any data held by state and municipal authorities as well as private actors, both companies and individuals! In light of the 83/2020. (IV.3.) decree, the Interior Minister and the Minister of Human Resources can get access to and manage data held by public health authorities, while the 93/2020. (IV.6.) decree provides the Operative Group with access to the personal data of people who (are suspected to) have contracted the virus as well as to the personal data of their contacts. EKINT considers these decrees to infringe on data protection as they do not impose sufficient time limits and controls over the use of the data and are not proportionate in their current form.



The government takes advantage of the emergency situation

Beyond decrees, however, parliamentary procedures warrant just as much attention under the current circumstances for two reasons. Firstly, in a recent [interview](#) Justice Minister Judit Varga explicitly stated that there might be measures that are required to stay in place beyond the state of danger; those, however, would be adopted via normal legislation, not decrees. The example of the amendment to the criminal code adopted as part of the “empowerment act” indeed bears witness to the logic.

Secondly, albeit the parliament continues to function, at least for now, it does so under modified rules and procedures that favor the government and further sideline the opposition. On March 30, the parliament, with the support of the opposition, adopted the [H/9842. resolution](#) that lifts normal deadlines for proceeding with independent initiatives of MPs until after the state of emergency has ended. The resolution allows for exceptions upon request to and with the approval of the Legislative Committee of the Parliament. As a result, between March 30 and April 20, only 3 out of the 20 initiatives submitted by opposition MPs have been requested to be considered by the Legislative Committee for progression. None of them have been put on the agenda yet. Notably, no MP of the governing parties submitted any initiatives during the same period. This resolution, however, does not affect proposals submitted to the parliament by the government, and indeed all 26 government initiatives in the same period have been put on the agenda, progressing in line with normal procedure.

These government initiatives often have nothing to do with the crisis and are likely tabled now because the Covid-19 emergency might distract from them. Such an initiative is the government’s [T/9934. omnibus bill](#), submitted on March 31, which among others contains an [amendment to the Civil Registry Act](#). This amendment would replace the term “gender” with “sex at birth” in the civil registry and would forbid the altering of this entry, making it legally impossible to change one’s gender in official documents and consequently would adversely affect the transsexual community.

The practice of the past few weeks has clearly shown that the government is keen on using its expanded crisis management toolkit for political gains by seeking to further weaken the opposition. An amendment of the abovementioned omnibus bill suggested stripping mayors of their emergency power obtained due to the state of danger and making all their decisions conditional upon the approval of a committee that has 5 days to decide. This amendment would have centralized power across the country on the county level as well as in a committee supervising the leadership of Budapest and its districts. The proposal was likely aimed at putting controls on mayors of the opposition who were just finding their feet after a relatively successful local election in autumn 2019. Following an immediate outrage – and likely pushback from Fidesz mayors – the government dropped this point from the omnibus bill.

The government’s [corona defense fund and economic recovery program](#), however, introduces various measures under the pretext of crisis management that will disproportionately hit the opposition parties and opposition-led municipalities. According to some of these measures, all parties must redirect 50% of their state funding, while municipalities must direct their income from the vehicle tax to the corona defense fund. Considering that Fidesz has a record of tapping into state funds to promote its messages as government information campaigns or public consultations, such cuts do not particularly affect the governing party. Fidesz-led municipalities can likely rely on the government if they need help with their budget in the future, too. Not so much those led by the opposition.



Conclusion

The balance of the first few weeks shows that the “empowerment law” is only one source of the current threats against democracy in Hungary. Some abovementioned decrees indeed raise concerns, threaten to infringe on citizens’ rights and freedoms, and adversely and disproportionately affect the opposition. However, focusing only on the decrees distracts from the more persistent and not at all new threat that lies in the increasingly illiberal core of the regime. **The legislative processes ongoing in parallel to the state of danger reveal that the government is progressing with its long-term agenda and using the distraction of the pandemic to introduce further restrictions to democratic rights and freedoms.** These will stay in force even if and when the state of danger is lifted. In this sense, the indefinite rule by decree is not a real turning point for Hungary. It is yet another symptom of the authoritarianization of the system of governance.

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