



International
Commission
of Jurists

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INSTITUTE

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FOR PRESS FREEDOM

21 April 2020

RE: Civil Society Organizations Urge Council To Urgently Take Up Hungarian COVID-19 Response In Ongoing Article 7 Procedure

Dear Ministers,

We, the undersigned organisations, write to you ahead of your debate tomorrow with EU affairs ministers to discuss the EU's and the member states' response to the COVID-19 outbreak. While EU institutions and member states are occupied with finding an effective, unified response to the unprecedented Covid-19 pandemic, we are concerned over how the Government of Hungary is using this challenging situation as an opportunity to further restrict human rights and erode the rule of law. In doing so, and contrary to the solidarity principle that should underpin EU cooperation, it takes Hungary further away from the Union's founding and common values.

Our organisations urge your government and the Council of the European Union to recognise the grave implications of the Hungarian government's recent steps and to take immediate measures to protect the principles enshrined in Article 2 of the Treaty on European Union (TEU), and the rights enshrined in the EU Charter of Fundamental Rights. The situation is of the utmost concern, considering the already deteriorated state of the rule of law and human rights in Hungary, which warranted the activation, in September 2018, of the procedure laid down in Article 7.1 TEU.

On 30 March, the Parliament of Hungary, in which the ruling party Fidesz wields a super-majority, adopted enabling legislation vesting the government with sweeping, open-ended emergency powers, allegedly designed to prevent and mitigate the impact of the COVID-19 pandemic in Hungary. The Act on the Protection Against the Coronavirus, or "enabling act", allows the government to "suspend the enforcement of certain laws, depart from statutory regulations and implement additional extraordinary measures by decree."¹ It provides no clearly defined time limit, or end point, for the extraordinary powers granted to the executive branch, provides no mechanism for genuine and periodic review of the emergency measures adopted, nor limits the scope of action of the government, whilst drastically weakening parliamentary and judicial oversight on its actions.²

While states are allowed under international human rights law to declare a state of emergency which threatens the life of the nation, mechanisms for effective scrutiny of relevant decisions and measures, and access to redress for any breaches, must be available. Although the Parliament is, in theory, in a position to amend or repeal the enabling act, the fact that there is no genuinely effective review or accountability process built into the Act contravenes Hungary's obligations under international law.

The Act also provides new criminal law provisions that punish the publication of broadly defined "false" or "distorted" facts with up to five years in prison. There is a serious risk that such provisions will be used to sanction media professionals, civil society representatives and, indeed, anybody criticizing the government's policies, while the chilling effect on freedom of expression and the media is imminent.³

¹ <https://hungarianspectrum.org/2020/03/21/translation-of-draft-law-on-protecting-against-the-coronavirus/>

² https://www.helsinki.hu/wp-content/uploads/HHC_background_note_Authorization_Act_31032020.pdf

³ <https://rsf.org/en/hungary>

Over fifty decrees were adopted in the framework of the enabling law, and some already feed in fears that the government would use the newly acquired emergency powers to further weaken the rule of law, lessen human rights safeguards and curb pluralism in the country.

For example, the Government Decree 92/200520 (6 April) sets out new special funds related to COVID-19. Under the heading 'EU aid', the government communicates an amount of zero Forint, ignoring the clarifications from the Commission in Budapest⁴ and the widely publicized news⁵ that the EU is distributing significant financial support to Hungary to help it overcome the health crisis. This raises questions about whether the government is acting in line with its obligation to mobilise resources to protect the right to health and livelihoods, including seeking international assistance when necessary.

As recalled by the President of the European Commission, international and European law set out a series of safeguards to avoid misuse or abuse of emergency measures that governments have the right and duty to take to prevent threats to public health and provide medical care to those who need it. In particular, it is vital that the measures are proportionate and time-bound, genuinely and periodically reviewed, and that emergency legislation provides for a 'sunset clause' to ensure that restrictions are only in place for as long as the criteria justifying the state of emergency still apply.

The enabling Act adopted by the Hungarian Parliament fails to meet those criteria. Further, it provides no safeguards against abuse and endangers the right to freedom of expression, including the right to seek, receive, and impart information. Its implementation measures recently adopted confirm the attack on human rights, pluralism and rule of law in the country, further eroding Article 2 TEU.

These developments come after a decade of erosion of human rights and the rule of law in the country. Most recently, Hungarian officials have undercut the rule of law by threatening to not abide by national court decisions or to not execute certain judgments of the European Court of Human Rights (ECtHR). This follows the adoption, last December, without adequate public consultation, of a new law undermining independent scrutiny in cases related to administrative authority, including politically sensitive matters.⁶ Laws passed in 2017 and 2018 put the right to freedom of association and the work of civil society organisations at risk, including by targeting organisations receiving funding from abroad, and criminalizing legitimate aid to migrants and asylum seekers. The decision in December 2018 to allow the merger without scrutiny of more than 400 media outlets into one conglomerate loyal to the government was another blow to media pluralism and the right to freedom of expression in the country.

In the face of such systematic and consistent attack by the Hungarian government against the Union's founding principles, the very slow progress of the Council under the Article 7.1 TEU procedure, triggered in September 2018 by the European Parliament, is very concerning, as is the failure of the European Commission to meaningfully and effectively address a decade of attacks against human rights and the rule of law in Hungary. Although important, the Commission's decisions in the past years to launch infringement proceedings to address specific EU law violations, are not by themselves sufficient to address the gravity and scale of the situation.

Our organisations urge the member states of the European Union to:

- **include in the agenda of the upcoming session of the EU General Affairs Council an Article 7.1 TEU hearing on the situation in Hungary, including recent developments in relation to the COVID-19 outbreak, and address to the government of Hungary, as a matter of urgency, concrete recommendations to safeguard respect for the rule of law and human rights in the country, that the Hungarian government must implement by a set deadline;**

⁴ <https://ec.europa.eu/hungary/news/eu-myths/crij>

⁵ <https://www.esiweb.org/publications/wizard-virus-and-pot-gold-viktor-orban-and-future-european-solidarity>

⁶ https://www.helsinki.hu/wp-content/uploads/HHC_Act_CXXVII_of_2019_on_judiciary_analysis_2020Jan.pdf

- **commit to assessing the implementation of the recommendations in a timely manner in order to reach a determination under Article 7.1 TEU and, should conditions warrant it, move forward under Article 7.2 TEU.**
- **ensure enhanced monitoring of the Hungarian government's use of EU funding, including funds aimed at supporting member states during the public health crisis.**

We urge both the Council and the Commission to cooperate with each other, and with the European Parliament and national parliaments, to ensure a coordinated, consistent and effective response to the situation.

The unprecedented emergency that the COVID-19 pandemic poses to all our countries requires decisive actions to ensure that no one is left behind. But this will only be achieved if human rights remain at the centre of all prevention, containment and response efforts. It is time to demonstrate your attachment to the EU's common founding principles by taking a stand against Hungary's egregious contempt for those same values, including by publicly expressing your concerns on the deterioration of the situation in the country.

This is anything but compatible with the spirit and the letter of the EU treaties. Not responding to this threat to EU values would endanger them not only in Hungary but throughout Europe and betray EU solidarity at a time when it is most needed.

We stand ready to assist with any further information you may require in preparation of all further action on these issues.

Yours Sincerely,

Amnesty International

International Federation for Human Rights (FIDH)

Human Rights Watch

International Commission of Jurists

Open Society European Policy Institute

Reporters Without Borders (RSF)