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# States of Emergency and Human Rights During a Pandemic: A Hungarian Case Study

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Late in the day on March 11, 2020, the Hungarian government issued Decree no. 40/2020, declaring a “state of danger”<sup>1</sup> in the growing coronavirus pandemic.<sup>2</sup> Soon after, on March 20, the Hungarian government submitted Bill T/9790<sup>3</sup> to Parliament, seeking parliamentary authorization to extend the effect of government decrees beyond the limits prescribed in the Fundamental Law — essentially, government decrees could be executed without parliamentary control under the pretext of public health protection. By March 30, the governing Fidesz party secured the requisite two-thirds majority of Parliament to approve the bill.<sup>4</sup> The law entered into force immediately, and it faced extreme international criticism.<sup>5</sup>

This Article will offer a brief background on the impact of COVID-19 in Hungary, the characteristics of the “coronavirus bill,” T/9790, and an overview of how international human rights law deals with states of emergency. This Article will then analyze the provisions of T/9790 against international human rights law obligations as well as against Hungary’s Constitution by addressing the specific rights of freedom of expression, freedom of the press, and right to a fair trial. This Article considers whether, under both international treaties and the Constitution, Hungary has met its obligations to protect fundamental human rights during a state of emergency by enforcing T/9790.

In June of 2020, the total number of confirmed coronavirus cases in Hungary stood at 4,027, with 2,391 recoveries and 551 deaths.<sup>6</sup> On March 11, the beginning of the state of danger, there was just one confirmed case.<sup>7</sup> Hungary found itself in the middle of the pack of states hit by COVID-19, trailing behind most Western European countries in its case count.<sup>8</sup>

While facing fewer cases compared to neighboring European countries, Prime Minister Viktor Orbán has taken the pandemic as an opportunity to consolidate government power indefinitely under the guise of a state of emergency. Orbán, a founding member of the anticommunist Fidesz party, was re-elected as prime minister in 2010.<sup>9</sup> A self-described illiberal leader known for anti-migrant rhetoric and severe economic austerity measures, Orbán has faced accusations of

<sup>1</sup> The Hungarian Constitution, known as the Fundamental Law, refers to a state of emergency as a “state of danger.” Magyarország Alaptörvénye [hereinafter “M.A.”], 53. cikk (Fundamental Law, art. 53).

<sup>2</sup> 40/2020. (III. 11.) Korm. r. a Veszélyhelyzet Megállapításáról (Government Decree No. 40/2020 (III. 11.) on the Declaration of a State of Danger).

<sup>3</sup> 2020. évi T/9790. törvényjavaslat a Koronavírus Elleni Védekezéséről (Bill T/9790 of 2020 on Protection Against Coronavirus) [hereinafter “T/9790”]. States of danger are only effective for fifteen days unless extended for another fifteen days by a two-thirds parliamentary vote.

<sup>4</sup> Amnesty International, *Hungary: Government Must Not Use Extraordinary Power to Roll Back Human Rights Amid COVID-19 Emergency*, Public Statement (March 31, 2020), <https://www.amnestyusa.org/wp-content/uploads/2020/03/EUR-27-2046-2020-Amnesty-International-Public-statement-Hungary-COVID19-bill-grants-the-government-extraordinary-power.pdf>.

<sup>5</sup> 2020. évi XII. törvény a Koronavírus Elszigetelése (Act XII of 2020 on Containment of Coronavirus).

<sup>6</sup> World Health Organization: Coronavirus Disease (COVID-19) Dashboard, Hungary, <https://covid19.who.int/region/euro/country/hu> (last visited Jun 14, 2020, 1:57 PM).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> The Editors of Encyclopedia Britannica, *Viktor Orbán*, BRITANNICA, <https://www.britannica.com/biography/Viktor-Orban> (last visited July 22, 2020).

authoritarianism from European leaders for a decade.<sup>10</sup> Bill T/9790 grants him unchecked power to silence dissenting voices, especially in the media, and restrict the fundamental human rights of freedom of expression, freedom of the press, and the right to a fair trial, which international law protects.

T/9790, or the Bill on Protection Against the Coronavirus, absolves the Hungarian government from parliamentary scrutiny during the declared state of emergency, effectively widening the government's power to rule by decree.<sup>11</sup> Neither the bill nor the decree declaring the state of danger has a defined end date, known as a sunset provision.<sup>12</sup> Arguably more concerning, the bill enacts two new crimes related to the COVID-19 crisis. The first provision, amending the Hungarian Criminal Code, applies the crime of imparting or conveying false information “with a reckless disregard for its truth or falsity”<sup>13</sup> to acts that “obstruct or frustrate” the successful protection of the public or might incite the public to action during the state of danger.<sup>14</sup> This crime could be punished by up to five years in prison.<sup>15</sup> The second provision states that any person who interferes with quarantine enforcement may be sentenced to up to three years in prison, five years if such an act is committed by a group, and eight years if anyone dies as a result of quarantine interference.<sup>16</sup> The bill does not elaborate on what defines false information, quarantine interference, or the successful protection of the public, leaving law enforcement broad discretion on how to apply T/9790. The bill also does not discuss any investigation or arrest meters, any rights of those suspected of violating the bill, or how the bill's enforcement will not tread on the internationally protected rights of freedom of expression, the press, or right to a fair trial.

Further, the bill allows the government to suspend the application of any law beyond the specific regulations listed in Act CXXVIII of 2011, the Management of Natural Disasters.<sup>17</sup> The Act was intended to apply to forces of nature, but its language easily applies to national health crises.<sup>18</sup> The Act lists specific rights that the government can suspend during a natural disaster, including the right to assemble in public, the right to travel, the right to property, and the right to education.<sup>19</sup> T/9790 allows for the erosion of more rights during this state of danger and places Hungary's

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<sup>10</sup> *Id.*

<sup>11</sup> T/9790 § 2; *Hungary: Government Must Not Use Extraordinary Power to Roll Back Human Rights Amid COVID-19 Emergency*, AMNESTY INT'L (Mar. 31, 2020), <https://www.amnesty.org/download/Documents/EUR2720462020ENGLISH.PDF> (stating that T/9790 authorizes the Hungarian government to rule by decree with no clear cut-off date).

<sup>12</sup> *Id.* §§ 3, 8.

<sup>13</sup> 2012. évi C. törvény a Büntető Törvénykönyv, 337. cikk (Act C of 2012 on the Criminal Code, Article 337).

<sup>14</sup> T/9790 §§ 10(1), 10(2); Akos Keller-Alant, *Hungarian Coronavirus Bill Will Have “Chilling Effect” on Media*, BALKANINSIGHT (Mar. 26, 2020), <https://balkaninsight.com/2020/03/26/hungarian-coronavirus-bill-will-have-chilling-effect-on-media/> (reporting that T/9790 gives the Hungarian government authority to imprison anyone for spreading misinformation that obstructs efforts to combat the virus).

<sup>15</sup> T/9790 § 10(2).

<sup>16</sup> *Id.* § 10(1).

<sup>17</sup> T/9790 § (2)(1); 2011. évi CXXVIII. törvény a Katasztrófavédelemről és a Hozzá Kapcsolódó Egyes Törvények Módosításáról, 24. alfejezet (Act CXXVIII of 2011 on Disaster Protection and Amending Certain Related Laws, Subchapter 24).

<sup>18</sup> Act CXXVIII of 2011 on Disaster Protection and Amending Certain Related Laws, Subchapter 24.

<sup>19</sup> *See id.*

already-notorious human rights record into further turmoil; in discussing the new criminal laws, the bill's vague language and its broad scope gives the government unchecked ability to restrict the rights of individuals and groups critical of the government.

The Hungarian Constitution, known as the Fundamental Law, protects many of the rights threatened by T/9790, including freedom of expression and freedom of the press.<sup>20</sup> The Fundamental Law, like ninety percent of the world's constitutions, contains a provision on executing a state of emergency.<sup>21</sup> Article 53 of the Fundamental Law asserts that the government has a right to rule by decree in a "state of danger," a special legal order that allows the government to introduce extraordinary measures by decree and suspend certain laws in order to resolve the emergency.<sup>22</sup> To guard against power vacuums, the Fundamental Law prescribes a fifteen-day effective period for orders by decree during a state of danger, after which only a parliamentary mandate can allow extensions.<sup>23</sup> All emergency decrees are to expire once the crisis and the attendant state of danger are over.<sup>24</sup> T/9790 bypasses these legal safeguards altogether by foregoing a sunset clause or any expiration measures. Under the Fundamental Law, Parliament must still maintain constitutional oversight and fulfill its normal functions during a special legal order,<sup>25</sup> and any members of Parliament may initiate a constitutional review procedure by the Constitutional Court — a special court created solely to protect the rule of law, constitutional integrity, and the balance of power.<sup>26</sup> In theory, Parliament and the Constitutional Court should act as counterbalances to the government during states of danger, in which the central government has extreme powers. This system of checks-and-balances is unlikely to yield results, given Orbán's tightening grasp on authoritarian-like command and that Parliament alone elects the members of the Constitutional Court.<sup>27</sup> As one journalist noted:

the [C]onstitutional [C]ourt could theoretically overrule the decisions implemented during the state of emergency, but given that its rights have been curbed and it has been stuffed with pro-government loyalists in recent years, we cannot expect that it will serve as an effective counterweight to the cabinet's power. Likewise, although the parliament could officially terminate the state of emergency, it won't. Orbán's Fidesz-KDNP has a comfortable and loyal majority; there has been not a single case in the past 10 years when Fidesz MPs have not supported a governmental decision.<sup>28</sup>

<sup>20</sup> MAGYARORSZÁG ALAPTÖRVÉNYE, THE FUNDAMENTAL LAW OF HUNGARY, ALAPTÖRVÉNY.

<sup>21</sup> M.A., *supra* note 1; Christain Bjørnskov & Stefan Voigt, *The Architecture of Emergency Constitutions*, 16 INT'L J. CONST. L. 101, 101 (2018).

<sup>22</sup> MAGYARORSZÁG ALAPTÖRVÉNYE, THE FUNDAMENTAL LAW OF HUNGARY, ALAPTÖRVÉNY.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*; EUR. L. INST., *The Constitutional Court of Hungary*, <https://www.europeanlawinstitute.eu/membership/institutional-members/the-constitutional-court-of-hungary/> (last visited June 14, 2020).

<sup>27</sup> EUR. L. INST., *supra* note 26.

<sup>28</sup> Péter Krekó, *The World Must Not Let Viktor Orbán Get Away with His Pandemic Power-Grab*, THE GUARDIAN (April 1, 2020), <https://www.theguardian.com/commentisfree/2020/apr/01/viktor-orban-pandemic-power-grab-hungary>.

While the Constitutional Court may offer little hope of enforcing the Fundamental Law's provisions, the Fundamental Law explicitly enumerates some non-derogable rights. Article 54 lists two groups of rights not subject to derogation under a state of danger.<sup>29</sup> The first group protects the right to life and human dignity, preserving life at the point of conception.<sup>30</sup> The second group protects against torture, inhuman and degrading treatment, enslavement, human trafficking, non-consensual scientific experimentation, selling human body parts, eugenics, and human cloning.<sup>31</sup> The Fundamental Law enumerates other rights considered essential in international law, but none of those are protected as non-derogable rights under Article 54. These include freedom of the press,<sup>32</sup> freedom of expression,<sup>33</sup> freedom to peacefully gather,<sup>34</sup> and freedom to peacefully join organizations.<sup>35</sup>

Hungary has an obligation to protect these non-derogable rights under international law. International law — through conventions, treaties, and customary law — protects these rights as fundamental to the preservation of human dignity.<sup>36</sup> Orbán has implemented T/9790 as a simple pretext, using the threat of a pandemic to justify the careful erosion of human rights, ultimately securing unchecked governmental control. Under neither international law nor its own constitution has Hungary adequately balanced its dual responsibilities of protecting public health and safeguarding human rights by implementing T/9790. International law prescribes the proper method for invoking a state of emergency and further protects inalienable rights from derogation under such state.<sup>37</sup> T/9790, with its ambiguous directives and sweeping criminal consequences, deviates severely from both establishing a proper state of emergency and protecting human rights during its state of danger.

Three principal elements unify nearly all international law regarding the declaration of states of emergency that require a derogation from certain rights: necessity, proportionality, and duration.<sup>38</sup> First, it must be necessary to restrict certain rights given the nature of the emergency. Article 15 of the European Convention on Human Rights stipulates that Hungary may take some measures to curtail certain human rights obligations during a “public emergency threatening the life of the nation,” but rights derogations must not exceed “the extent strictly required by the exigencies of the situation” and must also comply with Hungary’s other international human rights obligations.<sup>39</sup> For a state facing relatively small numbers of infection and a history of ruling by decree,

<sup>29</sup> Magyarország Alaptörvénye, THE FUNDAMENTAL LAW OF HUNGARY, ALAPTÖRVÉNY.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> International Covenant on Civil and Political Rights [hereinafter “ICCPR”] arts. 4(2), 8, 11, 15, 18, Dec. 16, 1966, 999 U.N.T.S. 171; European Convention on Human Rights [hereinafter “ECHR”] art. 15(2), Nov. 4, 1950, 213 U.N.T.S. 221.

<sup>37</sup> *See, e.g.*, ICCPR, *supra* note 36, at 174; ECHR, *supra* note 36, at 232.

<sup>38</sup> U.N. Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, ¶ 4, U.N. Doc. CCPR/C/21/Rev.1/Add. 11 (Aug. 31, 2001).

<sup>39</sup> ECHR Art. 15(1); *see also* European Social Charter, art. 30, October 18, 1961, E.T.S. No. 035; European Social Charter (revised), Part V, art. F, March 5, 1996, E.T.S. No. 163.

criminalizing the freedom of expression and the freedom of the press is an extreme and undue response clearly invoked to further political agenda. As mandated by the Parliamentary Assembly of the Council of Europe, Hungary must periodically review whether the public health crisis continues to necessitate the declared state of danger, and whether the strict measures in place to contain the virus's spread can be loosened or withdrawn completely.<sup>40</sup> The process of determining the necessity of rights derogations during an ongoing emergency should include meaningful scrutiny by multiple branches of government.<sup>41</sup>

Second, the derogation of rights must be proportional to the needs of the emergency situation.<sup>42</sup> Similarly, the erosion of such basic human rights is disproportionate to the needs of the emergency in Hungary. António Guterres, the Secretary General of the United Nations, asserted in a recent speech that “no one during this pandemic can take the place of the media to transmit information and analysis to the public, and to counter rumors and misrepresentation.”<sup>43</sup> The media itself is necessary to fight the pandemic — limiting its reach is incongruent with the stated mission of T/9790.<sup>44</sup> Finally, the principle of duration holds that a state of emergency should only continue so long as the emergency itself persists. As stated in ICCPR General Comment No. 29, “the restoration of a state of normalcy where full respect for the Covenant can again be secured must be the *predominant objective* of a State party derogating from the Covenant.”<sup>45</sup> T/9790's lack of durational limitations contradict the standards of international law as well as Hungary's constitutional requirement.<sup>46</sup> Whenever a state of emergency lacks one of these essential elements in international law, international legal enforcement bodies must judge the actions of the government in question in light of its ordinary treaty obligations rather than through the special lens of a legitimate state of emergency. Governments cannot escape treaty obligations at will; the right to derogate is circumscribed by several conditions: “[f]undamental 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>47</sup>

Hungary has already acted under T/9790 and deprived individuals of their fundamental human rights. In April, the Hungarian public news broadcaster Híradó, a notoriously pro-government program, debuted a “fake news monitor” to disprove false information about the pandemic.<sup>48</sup> Many

<sup>40</sup> Eur. Parl. Ass., *State of Emergency: Proportionality Issues Concerning Derogations Under Article 15 of the European Convention on Human Rights*, ¶ 19.4, 2018 Ordinary Sess. (second sitting), Resolution 2209 (2018) [hereinafter “PACE”].

<sup>41</sup> *Id.* ¶ 19.6.

<sup>42</sup> See, e.g., PACE Resolution 2209, *supra* note 40.

<sup>43</sup> U.N. Secretary General, Remarks on Press Freedom and Tackling Disinformation in the COVID-19 Context (May 4, 2020), <https://www.un.org/sg/en/content/sg/statement/2020-05-04/secretary-generals-remarks-high-level-dialogue-press-freedom-and-tackling-disinformation-the-covid-19-context-bilingual-delivered-scroll-down-for-english-and-french>.

<sup>44</sup> *Id.* (“Journalists and media workers of all kinds are crucial to helping us make informed decisions. In a pandemic, those decisions can save lives.”).

<sup>45</sup> U.N. GAOR, 56th Sess., supp. no. 40 at 202 ¶ 1, U.N. Doc. A/56/40 (July 2001) (emphasis added).

<sup>46</sup> CCPR General Comment No. 29, *supra* note 38; M.A. 53(3).

<sup>47</sup> PACE Resolution 2209, ¶ 3, *supra* note 40.

<sup>48</sup> Justin Spike, *COVID Pandemic Adds to Pressure on Hungarian Media*, VOA NEWS (June 1, 2020), <https://www.voanews.com/press-freedom/covid-pandemic-adds-pressure-hungarian-media>.

of the issues targeted come from politicians opposing President Orbán or articles by news organizations that are critical of the government. The monitor demonstrates how Hungary has used the legitimate battle against coronavirus misinformation to mask its efforts to label watchdog journalism as “fake news.” In May, police used T/9790 to detain two men for “scaremongering” in social media posts that criticized the government. One of the men, Janos Csoka-Szucs, a member of the Hungarian Momentum Party, which opposes President Orbán, was interrogated for several hours while police seized his phone and computer.<sup>49</sup> The growing animus toward non-government-sponsored news outlets is emboldened by T/9790’s passage. As one Hungarian media researcher noted, “[t]he legitimate goal [of countering fake news] is being confused with incitement against journalists and opposition politicians, which is terribly dangerous.”<sup>50</sup>

These incidents raise serious concerns in international law, which widely condemns any disintegration of the freedom of opinion and expression, the freedom of the press, and the fair application of the rule of law. The freedom of opinion and expression is considered a fundamental right under Article 18 of the ICCPR,<sup>51</sup> Article 15 of the ICESCR,<sup>52</sup> and Article 11 of the European Union Charter of Fundamental Rights,<sup>53</sup> to all of which Hungary is a party.<sup>54</sup> The freedom of the press is also protected under Article 19 of the Universal Declaration of Human Rights, wherein “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>55</sup> By criminalizing citizens who voice their own opinions and doubts through social media and journalism, T/9790 clearly infringes on individuals’ right to freely express their opinions “without interference,” as well as independent news organizations’ freedom to “impart information and ideas through any media.”<sup>56</sup>

The arbitrary detention of Csoka-Szucs and the threatened detention of independent journalists across Hungary also illustrates derogation from another fundamental principle of international law: adherence to the established tenants of the rule of law during an emergency, including the right to a fair trial.<sup>57</sup> The United Nations Human Rights Committee states in CCPR General Comment 29 that arbitrary detentions, even for brief interrogations, infringe on the right to a fair trial.<sup>58</sup> General

<sup>49</sup> Joanna Kakissis, *European Parliament Lawmakers Demand Punishment for Hungary Over Emergency Powers*, NPR (May 14, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/05/14/855918912/european-parliament-lawmakers-demand-punishment-for-hungary-over-emergency-power>.

<sup>50</sup> *Id.*

<sup>51</sup> ICCPR art. 18, *supra* note 36.

<sup>52</sup> International Covenant on Economic, Social and Cultural Rights art. 15, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter “ICESCR”].

<sup>53</sup> Charter of Fundamental Rights of the European Union, art. 11(1), 2012 O.J. (C 326). [hereinafter “EUCFR”].

<sup>54</sup> *See also* G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 19 (Dec. 10, 1948) [hereinafter “UDHR”].

<sup>55</sup> *Id.*; *see also* EUCFR art. 11(2), *supra* note 53.

<sup>56</sup> UDHR, *supra* note 54.

<sup>57</sup> Shaun Walker, *Hungarian Journalists Fear Coronavirus Law May Be Used to Jail Them*, THE GUARDIAN (April 3, 2020), <https://www.theguardian.com/world/2020/apr/03/hungarian-journalists-fear-coronavirus-law-may-be-used-to-jail-them>.

<sup>58</sup> CCPR General Comment No. 29, ¶¶ 11, 16, *supra* note 38.



Comment 24 considers this principle to be customary international law.<sup>59</sup> Additionally, Article 9 of the ICCPR protects against arbitrary arrest and security of person, an obligation that T/9790 fails to meet because its specious new crimes are vaguely-worded and violate other international legal rights.<sup>60</sup> T/9790’s language criminalizing the “imparting or conveying [of] false information” that “obstructs or frustrates” the successful protection of the public does little to define how information is deemed false and what is considered an obstruction of the “successful protection” of the public.<sup>61</sup> Further, the provision that criminalizes “interfere[nce] with quarantine enforcement” does not define what constitutes interference and does not elaborate on how such interference could be tied with the death of another person to attain the eight-year prison sentence, considering that the virus has a fourteen-day incubation period and could already have infected the deceased person.<sup>62</sup> The fundamental requirements of the rule of law must be respected during a state of emergency — anyone detained, charged, or imprisoned under T/9790 is wrongly criminalized, as the criminal provisions of the law itself do not meet international standards during a state of emergency.

The international community’s response to T/9790 has brought harsh criticism to Orbán’s leadership during the pandemic. European Union Parliament lawmakers have demanded official denunciation and punishment for Hungary over this law, with Hungarian members calling to slash Hungary’s EU funds.<sup>63</sup> One Hungarian member of the European Parliament, who represents the country’s Momentum Party, charged Orbán with using the law as a smokescreen for consolidating authority: “[t]his law is meant to intimidate and silence dissenting voices because the prime minister is scared to lose his power.”<sup>64</sup> Civil society in Hungary and around the world have sounded the alarm on the chilling effects of T/9790 on basic freedoms. In a joint statement, the Hungarian Helsinki Committee, Civil Liberties Union, Eötvös Károly Institute, and Amnesty International Hungary condemned the law, calling for domestic and international accountability measures.<sup>65</sup> An online protest letter has garnered 100,000 signatures, and thousands have watched online protests.<sup>66</sup> Other international institutions have criticized T/9790, including the UN Human

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<sup>59</sup> Human Rights Comm., CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add. 6 (Nov. 4, 1994).

<sup>60</sup> ICCPR art. 9, *supra* note 36; T/9790, *supra* note 3.

<sup>61</sup> T/9790, *supra* note 3.

<sup>62</sup> *Id.*; *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, Coronavirus Disease 2019 CDC.gov, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (updated June 30, 2020).

<sup>63</sup> Joanna Kakissis, NPR, *supra* note 47.

<sup>64</sup> *Id.*

<sup>65</sup> Amnesty International Hungary, Eötvös Károly Institute, Hungarian Civil Liberties Union & Hungarian Helsinki Committee, *Unlimited Power Is Not the Panacea: Assessment of the Proposed Law to Extend the State of Emergency and Its Constitutional Preconditions*, COVID-19, The Hungarian Helsinki Committee (Mar. 23, 2020), <https://www.helsinki.hu/en/unlimited-power-is-not-the-panacea/>.

<sup>66</sup> *Hungary: Government Must Not Use Extraordinary Power to Roll Back Human Rights Amid COVID-19 Emergency*, AMNESTY INT’L (Mar. 31, 2020), <https://www.amnesty.org/download/Documents/EUR2720462020ENGLISH.PDF>.

Rights Commissioner, the Secretary General of the Council of Europe, the Civil Liberties Committee of the European Parliament, Reporters Without Borders, and Human Rights Watch.<sup>67</sup>

Because Hungary has failed to meet the standard for derogation of rights during a state of emergency, treaty bodies should act as prescribed in their respective treaties for addressing aberrant behavior by member states. Moreover, detained Hungarians may bring grievances regarding their unlawful detention, as emphasized in the United Nations Human Rights Committee's General Comment 29 and General Comment 35.<sup>68</sup>

One venue for recourse could be the European Court of Human Rights ("ECtHR"). The ECtHR is empowered to rule on whether Hungary has gone beyond the extent strictly required by the exigencies of the crisis.<sup>69</sup> When determining whether a state has gone beyond what the situation strictly requires, "the Court must give appropriate weight to such relevant factors such as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation."<sup>70</sup> The ECtHR has also charged domestic courts with the responsibility to carry the same analysis in similar cases, stating that national courts should scrutinize emergency measures by the executive and assess whether the measures taken are proportional to the nature of the threat posed by the emergency.<sup>71</sup>

Because the Hungarian Parliament can no longer check the government's actions, the Constitutional Court must intervene to quickly and constructively assess the constitutionality of any decisions made or individual measures taken pertaining to the state of emergency. Following the recommendations enumerated in the joint statement issued by civil society institutions, the measures to enable the Constitutional Court's intervention should include (1) allowing any members of Parliament or the head of parliamentary groups to initiate a constitutional review process in the Court, and (2) shortening the deadlines by which the Constitutional Court must rule on petitions regarding T/9790 and any related measures.<sup>72</sup> Additionally, the Court must exercise its authority to find that Parliament may only grant an extraordinary legal mandate to the government — such as T/9790 — for a predefined period of time so as to eliminate any threat of renewing a special legal order ad infinitum.

Regardless of the recourse sought by affected Hungarians or concerned treaty bodies, no court or parliamentary body should be satisfied by Hungary's recent attempt to assuage international criticism. Just before midnight on May 26, 2020, Hungary announced plans to revoke T/9790. However, the replacement law would implement nearly identical provisions as T/9790.<sup>73</sup> While

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<sup>67</sup> *Id.*

<sup>68</sup> Human Rights Comm., CCPR General Comment No. 29: Article 4: States of Emergency, ¶ 16, U.N. Doc. CCPR/C/21/Rev.1/Add. 11 (Aug. 31, 2001); Human Rights Comm., CCPR General Comment No. 35: Article 9: Liberty and Security of Person, ¶ 5, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).

<sup>69</sup> *Ireland v. United Kingdom*, 25 Eur. Ct. H.R. (ser. A) ¶ 207 (1978).

<sup>70</sup> *Brannigan & McBride v. United Kingdom*, 258-B Eur. Ct. H.R. (ser. A), ¶ 43 (1993).

<sup>71</sup> *A and others v. United Kingdom*, 49 Eur. H.R. Rep. 29, ¶¶ 173–74, 184 (2009).

<sup>72</sup> As permitted under M.A., 24(2)(g). cikk (Fundamental Law, art. 24(2)(g)).

<sup>73</sup> Lydia Gall, *Ending Hungary's State of Emergency Won't End Authoritarianism*, HUM. RTS. WATCH (May 29, 2020), <https://www.hrw.org/news/2020/05/29/ending-hungarys-state-emergency-wont-end-authoritarianism>.

the government would formally end the state of emergency, the new bill would maintain Prime Minister Orbán’s power to rule by decree “for an undefined period of time with minimal judicial and parliamentary scrutiny.”<sup>74</sup> In addition to its repetition of T/9790’s provisions, the bill would allow the government to declare a “state of medical emergency” via the Chief Medical Officer of the state, a position that is under government control.<sup>75</sup> Such a declaration would, like any state of danger, give the government permission to curtail fundamental rights for six months, renewable indefinitely.<sup>76</sup> Renewal would be entirely up to the government without parliamentary or judicial oversight.<sup>77</sup> As the “little sister”<sup>78</sup> law to T/9790, this bill would enact the same internationally-illegal measures, simply under a different name. As Orbán told an interviewer in 2013, “in a crisis, you don’t need governance by institutions.”<sup>79</sup> Under T/9790, and with international accountability slow moving, that statement has proved to be true for Hungary during the coronavirus pandemic.

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Amnesty International Hungary, *Never-Ending Story: Rapid analysis of the Bill on Terminating the State of Danger (T/10747) & the Bill on Transitional Provisions related to the Termination of the State of Danger (T/10748)*, COVID-19, THE HUNGARIAN HELSINKI COMMITTEE (May 27, 2020), <https://www.helsinki.hu/en/never-ending-story/>.

<sup>79</sup> James Kirchick, *Europe’s Other Strongman*, WALL ST. J. (Mar. 22, 2018), at A.17.