



MINISTRY OF JUSTICE
HUNGARY

Briefing from the Ministry of Justice concerning the Act on the containment of coronavirus

31 March 2020

The COVID-19 human pandemic poses an unprecedented challenge to the European Union and its Member States. Ordinary solutions and traditional approaches have manifestly proven inadequate.

In order to contain the pandemic, a number of exceptional measures have been introduced by all the Member States of the European Union depending on their constitutional arrangements and their assessment of the gravity of the situation.

As of 11 March 2020 15:00 hours, the Government declared a state of danger in order to protect the life and health of citizens. According to the Hungarian Fundamental Law exceptional measures taken by the Government during a state of danger remain in force for 15 days, unless the Government, on the basis of authorisation by the National Assembly, extends those measures. On 20 March 2020, the Government submitted a draft bill to the National Assembly requesting the prolongation of the mandate.

The National Assembly adopted the draft bill on 30 March 2020 with a qualified majority according to the Fundamental Law. The law was promulgated on 30 March 2020 as Act No. XII of 2020, and entered into force on 31 March 2020.

The Act does not limit the power of the National Assembly. On the contrary, it is the only exceptional measure in Europe now that actually extends the prerogatives of the National Assembly vis-à-vis the Government. **It expressly provides the National Assembly with the power to revoke the authorisation at any time, either in general or in the case of specific measures.** The National Assembly may also terminate the effect of the legislation when the state of danger is over.

The Act does not contain any restrictions on the activities of the National Assembly; therefore, the National Assembly retains oversight and control. Also, according to the Act, the Government shall regularly provide information on the measures taken to eliminate the state of danger until the measures are in effect at the sittings of the National Assembly or, in the absence thereof, to the Speaker of the National Assembly and the leaders of the parliamentary groups.

The Government's authorisation is limited. It may only adopt exceptional measures that are necessary and proportionate in the context of the COVID-19 pandemic to protect citizens' lives, health, security and economic stability. The measures will cease to be in force when the state of danger ends.

Rule of law, of course, is not suspended: all authorities will continue to operate in the constitutional and legal framework applicable. **The Constitutional Court is in session and special procedural rules are authorised to facilitate its activities.**

The Act introduces a moratorium on interim elections (by-elections); they may not be called until the day following the end of the period of state of danger. General elections as foreseen by the Fundamental Law are not affected.

The Act amends the Criminal Code and introduces a new form of fearmongering. The amendment sanctions only intentionally false statements made to the general public capable of obstructing or frustrating defence efforts. This provision is both adequate and necessary to fight malicious disinformation campaigns.

According to the European Commission's Action Plan against disinformation "*disinformation is understood as verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm. Public harm includes threats to democratic processes as well as to public goods such as Union citizens' health, environment or security.*" The Act follows the very same objective and approach.

The Criminal Code has already contained a provision on fearmongering. However, the previous definition of fearmongering was not equipped to deal with a pandemic situation (i.e. when public danger is not confined to a particular venue or site) or with fearmongering conducted through non-traditional means of communication.

The temporal scope of the new provisions is confined to the period of special legal order and their material scope is confined to the statement or dissemination of untrue facts or misrepresented true facts. **Opinions, however critical they may be of the Government, as well as speculations or forecasts do not fall under its scope.** The crime can be committed only intentionally. This means that the perpetrator must be aware of the falsehood of his statement. In order to be punishable, the action must have the potential to hinder or restrain the efficiency of the protective measures. The communication must be performed in front of a large audience, i.e. it must reach the public. Private communications do not fall under the scope of the crime.

The provisions do not introduce any new concepts to the Criminal Code. The concepts of 'statement' and 'dissemination' as well as 'untrue facts' and 'misrepresented true facts' or 'large audience' already exist in the Criminal Code and has been subject to extensive interpretation by the judiciary. Therefore, the provision also complies with the principle of legal certainty.