



Hungary's Coronavirus legislative response: indeterminate powers for an indeterminate period

Dr Ronan Cormacain

The UK's legislative response to Covid-19 has been enacted in great haste, and its impact on the Rule of Law will no doubt continue to be debated in the months to come. However, it is clear that the [Coronavirus Act 2020](#) contains some important Rule of Law safeguards. It has a [sunset clause](#), meaning it will expire after 2 years. It allows Parliament the possibility to [review](#) the Act after 6 months. The Secretary of State must [lay reports](#) before Parliament every 2 months on the "status" of the Act. The Government has committed itself to providing "evidence and explanation in justifying the conclusions set out in these two-monthly [reports](#)". The Bingham Centre has scrutinised the Bill [here](#), [here](#) and [here](#).

The situation in Hungary is quite different. The Government, under the leadership of Prime Minister Orbán, proposes to introduce a Bill of emergency measures into the Hungarian Parliament this Monday. The Prime Minister has a huge majority in Parliament, the kind that effectively means power to pass laws without restraint. The Hungarian language version of the Bill is [here](#), with an unofficial English translation available [here](#).

The Bill is open ended in duration. There is no sunset clause. Emergency measures ought not be enacted for an indeterminate time period. This goes against the UNs [Siracusa principles](#) that the emergency measures have a termination date and that they are only to be in force for as long as strictly necessary. The International Commission of Jurists specifically highlighted the indefinite extension of emergency powers in [calling upon the Hungarian Parliament to not pass this Bill](#). The only provision on duration of the Bill is in section 8 which states that "The decision on the expiry of this law shall be made by the Parliament upon the end of the emergency". In practice, this means that it is the Government who determines the end date of the legislation.

As well as specified powers, the Bill contains a power for the Government to essentially do whatever it wants. Section 2 of the Bill states that the Executive "may suspend the enforcement of certain laws, depart from statutory regulations and implement additional extraordinary measures by decree". Renáta Uitz, Professor of Comparative Constitutional Law at the Central European University Budapest calls this an [unlimited power](#). Indeterminate power for the Executive, even during an emergency, is not in accordance with the Rule of Law. The UK's legislative response may have been criticised for intruding upon civil liberties and human rights, but at least it had 300+ pages of detailed rules setting out what the Government could do.

Section 10 of the Bill creates a new criminal offence, punishable by up to five years in jail, for stating or distributing false or distorted facts in such a way that it is capable of hindering or obstructing the government's response to the pandemic. Although fake news is a risk during a pandemic, this is a disproportionately heavy-handed way of dealing with this problem and this kind of power is susceptible to abuse. The OSCE representative on Freedom of the Media, [Harlem Désir](#) stated that "there is a great risk that the new regulation will not so much penalize the disseminators of harmful disinformation but instead make the work of independent journalism more difficult". It is hard to disagree with his argument. We cannot forget that the heroic Wuhan Doctor [Li Wenliang](#) was originally punished by the state for "[spreading false rumours](#)".

The European Parliament is clearly concerned. Its [Civil Liberties Committee](#) has reiterated that, even in this emergency "these measures should always ensure that fundamental rights, rule of law and democratic principles are protected". This view is shared by the Council of Europe, whose Secretary General [wrote](#) to the Hungarian Prime Minister in the following terms "An indefinite and uncontrolled state of emergency cannot guarantee that the basic principles of democracy will be observed and that the emergency measures restricting fundamental human rights are strictly proportionate to the threat which they are supposed to counter".

There is no doubt around the need for emergency legislative responses, but indeterminate powers for an indeterminate period are not the solution. Hungary's Coronavirus Bill needs to be amended to include safeguards for the Rule of Law and the continuation of democracy.

URL: <https://binghamcentre.biicl.org/comments/86/hungarys-coronavirus-legislative-response-indeterminate-powers-for-an-indeterminate-period>