



Mr Viktor Orbán
Prime Minister of Hungary
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Dear Prime Minister,

The Bar Council of England and Wales (Bar Council) and the Bar Human Rights Committee of England and Wales (BHRC) express grave concern regarding the introduction of legislation on Monday 30 March granting emergency powers to the Hungarian executive.

Key features of Act XII of 2020 which give particular cause for concern include:

- the absence of any temporal limit on the powers;
- the discretion to bring the Act to an end is invested, to all practical purposes, in the government, which is empowered to decide if and when the 'end of the emergency' is reached, notwithstanding the specific wording in Section 8 which provides the power of repeal to parliament;
- Section 2 of the Act, which states that the Executive may "suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures". Such indeterminate power handed to the Executive, even during an emergency, is inconsistent with the rule of law.
- Section 10 of the Act, which 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. Such a disproportionate response itself is capable of hindering accurate, independent reporting by which is essential in such a crisis.

We note that the granting of such wide powers, particularly in the context of the well-documented weakening of Hungary's judicial institutions, civil society and independent press over recent years, appears to place Hungary in breach of its cornerstone obligations under Article 2 of the Treaty on European Union. Article 2 provides:

"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

We acknowledge the difficult balance for governments in responding to the COVID-19 public health crisis and recognise the need for governments to legislate for emergency measures aimed at protecting the public during the coronavirus pandemic. However, any interference with the normal checks and balances on excessive state power must be proportionate, strictly necessary to the evaluated risk and applied in a non-discriminatory way. Such measures should always ensure that the rule of law, democracy and fundamental rights are protected and preserved, both during and after any period of emergency. They must be subject to procedural safeguards, including independence from the executive organs of government. We are extremely concerned about the absence of any adequate safeguards to support those principles.

We also have serious concerns about the impact of this legislation on the ability of medical professionals, scientists and other experts, as well as journalists, to speak freely and to share relevant and important information during this crisis. The heavy-handed response to any genuine concern about fake reporting risks stifling access to critical information and participation by the public and penalising the media for independent reporting and scrutiny on matters of public health and interest.

Many of our concerns have been similarly expressed by leading European institutions, including the European Parliament through its Civil Liberties Committee, and the Council of Europe. We agree with Secretary General Burić, who has written to you 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*".

We note also that the United Nation's **Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights** require that any emergency measures have a termination date and must remain in force only for as long as strictly necessary. We further note that 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 Bar Council and BHRC take very seriously all acts by governments which have the effect of subverting the rule of law and democratic governance. Emergency measures must comply with domestic and international legal obligations, including by way of its membership of the European Union and the Council of Europe, to which Hungary is subject. We call upon the relevant Hungarian authorities to take immediate action to respect such obligations in a proportionate and necessary manner. In particular, we call on the Government and the Fidesz party majority in Parliament to reconsider and reverse the disproportionate measures within the new law, as listed above, including the lack of any sunset clause or review provision, and which threaten to subvert Hungary's weakened democracy, both during this and after the crisis.



Amanda Pinto QC
Chair of the Bar Council



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