



PARLIAMENTARY REPRESENTATIVE

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April 20th 2020

Your Excellency,

Mr. László Kövér, Speaker of the Hungarian National Assembly – as well as Chairman of the National Committee of FIDESZ – recently wrote you, defending the new Hungarian law equipping the Government with extraordinary powers, for an indefinite period, to combat the Coronavirus pandemic. The law – widely called “Authorization Act” by the press – was adopted by the FIDESZ majority against the protests of the opposition and the general public. The Speaker’s letter contained a number of false or misleading arguments. Given that the public office Mr. Kövér holds would oblige him to represent Parliament in its entirety, he might have created the wrong impression that he was indeed explaining the common position of the Hungarian legislature. This, however, is not true. What he writes reflects, in a one-sided and deceptive manner, is strictly and exclusively the position of FIDESZ. Therefore, I feel obliged to inform you about the real state of affairs, in the name of the European, democratic-minded members of the Hungarian Parliament.

Mr. Kövér claimed that the powers granted to the Government by the new law were not unlimited: neither in time, nor as to the substance of the measures to be taken. Furthermore, he claimed that it complies with the Fundamental Law of Hungary (Constitution).

Contrary to those claims, the Authorization Act provides the Government with the right to extend the duration of extraordinary measures it already took, or will take in future. Its decisions to that effect requires no approval from the National Assembly. The Government is entitled to grant such extensions unilaterally, without any obligation of a justification. By definition, this makes those decisions unlimited in time. Powers to the executive are granted for the duration of the emergency – however, the decision about the beginning and end of that emergency is within the exclusive competence of the Government as well.

As to the indefinite extension of executive measures, the law only requires the Government to inform Parliament – without determining the manner of such information. Obviously, this solution cannot be regarded as legislative control according to rule of law principles.

Furthermore, the constitutionality of this provision is also doubtful. The Fundamental Law explicitly states, that upholding government decrees taken in an emergency beyond a period of 15 days requires parliamentary confirmation. Clearly, the new law is a legislative act subordinate to the Fundamental Law. The fact that it would still transfer the right of extension to the Government obviously goes against rule of law requirements.

The explanatory note to the Authorization Act justifies the unlimited empowerment of the Government, and the elimination of parliamentary oversight by invoking the possibility of a situation, where Parliament would not be able to assemble due to the Coronavirus pandemic, or where holding a plenary session in line with quorum requirements would be contrary to the need to limit the spreading of the virus. At the same time, however, the Government majority rejected the proposal put forward by opposition parties, to enable Parliament to hold remote, on-line sessions. Despite the fact that they did grant the same option to the Constitutional Court (which was enlarged with another, unilaterally nominated FIDESZ-member, at this very time).

Furthermore, Mr. Kövér also claimed that the empowerment was not indefinite in time, since it was limited to the duration of the pandemic. He even suggested that the law strengthened Parliament, as the legislature is able to withdraw that empowerment at any time.

In reality, according to the Hungarian Fundamental Law, the Government has exclusive competence to decide about the duration of the emergency period. Objective criteria to determine that decision does not exist at all. According to the law, the empowerment does not only cover the pandemic itself, but also the management of its aftermath. Obviously, that may take a very long time. The mentality behind the Government's argumentation, and the dangers hidden in the legislation, are demonstrated by the case of the migration emergency. That emergency has been repeatedly and continuously prolonged by the cabinet for five years now, despite the fact that barely a handful of refugees have been coming to Hungary at any time since it was declared.

While Parliament could indeed revoke the Authorization Act by a two-thirds majority – the same way as it is able to change any law with the majority applicable – this is by no means a new prerogative for the National Assembly. It is a mere consequence of fundamental constitutional principles. What is more, countless times in recent years, the Government's majority has invalidated parliamentary sessions initiated by the opposition simply by refusing to turn up and thereby making the plenary unable to take decisions. Based on the justification of the law one cannot even exclude that the fully empowered government could decide that “a plenary session of Parliament in line with quorum requirements would not be reasonable from the point of view of limiting the spread of the disease”, and accordingly suspend the work of the National Assembly.

As Mr. Kövér argues, the validity of the empowerment was not indefinite, because the Government is allowed to take extraordinary but necessary and proportionate measures in connection with the COVID-19 pandemic, in order to preserve the life, health and safety of citizens, and the stability of the economy.

In reality, however, it is exclusively up to the Government to decide, what measures would fit that description. According to the law, it may deem anything at all to be linked to management of the pandemic, or its consequences, without any limitations defined by current laws. According to § 2 of the law, [The Government] “... acting through a decree, may suspend the application of certain laws, derogate from their application, and may take other extraordinary measures”. As it is further explained by the justification annexed to the law, “With a view to the extraordinary nature of the situation, and the impossibility to foresee the needs for future measures, the proposal does not establish a taxative list of executive or legislative powers that the Government may use.”

As to the legislative areas concerned, the law does not even contain an exemplary list, which results in an essentially unlimited empowerment, without further justification. Neither does the new legislation provide a reasoning as to why the Law on Disaster Prevention, adopted by a two-thirds majority, and the prerogatives contained in that law, would not be sufficient to deal with the emergency. And it does not explain why an empowerment going beyond that law, unlimited in time as well as in substance, would actually be required.

According to Mr. Kövér, the National Assembly is a well-functioning, sovereign institution, unlimited in the exercise of its powers, taking decisions in the interest of the Hungarian people, to whom it is solely responsible.

In reality, as a result of the Authorization Act, the Government's work regarding the pandemic is unchecked by Parliament. In that regard, the National Assembly functions in a merely formal manner at best. In effect it is powerless to supervise the executive.

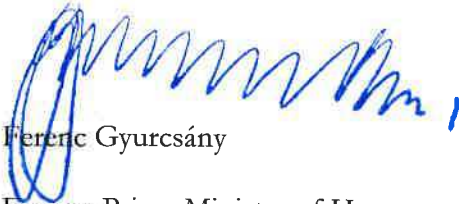
The result is a government by decrees, denying Parliament any kind of control over the parallel branch of power, with regard to the elimination, or mitigation, of the pandemic emergency and its harmful consequences. The opposition does not even have formal rights to check executive decisions. Its room of manoeuvre extends only as far as to put questions to members of the

Government. But these questions are often met with formal replies lacking any substantial information.

Beyond the management of the pandemic, Parliament continues to work according to normal procedure. However, those activities are of secondary significance at this stage. And they certainly do not establish any control over the meaningful decisions that relate to issues of actual national importance right now.

Your Excellency,

We kindly invite you to continue evaluating the state of democracy and the rule of law in Hungary impartially, based strictly on facts. Hungarian people deserve to enjoy the same human rights, and the same freedoms, as citizens living in other EU member states, or any other country of the free world. Hungary's fate may only be decided by the community of its citizens. Nevertheless, freedom-loving Hungarians will welcome if the friends of democracy and the friends of Hungary raise their voices for the respect of democratic principles, the rule of law, human and civil rights also with regard to our homeland. We therefore ask you to also encourage and support the struggle of Hungarians fighting for their freedom and their fundamental rights.



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