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Hungary: Constitutional changes would grant the Executive sweeping counter-terrorism powers

On 26 April, the Hungarian government tabled a package of measures, including a “sixth amendment” to the Constitution (*Magyarország Alaptörvénye*, the Fundamental Law of Hungary) and to laws governing the police, national security services and defence forces, to streamline the process to call a state of emergency in the country. The package of measures, which would grant the Executive overly broad counter-terrorism powers with wide scope for restricting human rights, are under debate in the Hungarian Parliament this week.

An earlier version of these proposals, which at the time Amnesty International described as “draconian”, was leaked in January 2016. Although some of the most problematic elements in the leaked version have been removed, the revised draft amendment and package of measures still rely on an extremely vague and overly-broad concept of a “terror threat situation,” (*terrorveszélyhelyzet*), which if declared, would grant the Executive wide-ranging powers that would threaten to violate Hungary’s international human rights obligations. In particular, the concept of a “terror threat situation” is so ill-defined that it violates the principle of legality, which requires that the law be formulated in clear and unambiguous terms.

The proposed “sixth amendment” would allow the following:

- Parliament would be able to declare a “terror threat situation”, with no maximum duration, effectively giving the Executive the power to authorize and implement extraordinary measures set out in the relevant associated laws on police, national security services and defence forces;
- In a period of up to 15 days between the government’s initiation of a proposal seeking the declaration of a “terror threat situation” and a vote by Parliament to declare one in force (requiring a two thirds majority), the Executive would have the power to enact exceptional measures that would normally only be permitted under a “terror threat situation,” providing that it informs the President and any relevant committees;
- During a “terror threat situation” declared by Parliament, the Executive would be able to issue orders to suspend some laws and adopt new extraordinary measures;
- The Army would be deployed to fulfil internal policing functions prior to Parliament’s declaration of a “terror threat situation” if the police and national security services are deemed insufficient by the Executive.

The package also includes measures that would allow the Government—once it had initiated a motion to declare a “terror threat situation”—to introduce measures in the first 15 days which would:

- Restrict the right to movement within the national territory
- Permit the military and police to be deployed for securing institutions and infrastructure considered crucial to the defence of the country
- Assert military control over all air traffic
- Freeze the assets and restrict property rights of states, individuals, organizations and legal entities which are deemed a threat to international peace or national security
- Ban or restrict events and assemblies on public premises

- Give the government latitude to apply any – as yet undefined – special measures to prevent terrorism.

Those powers would be increased after 15 days if Parliament approves the declaration of a “terror threat situation”.

The remainder of the legislative package would amend the Laws on the Police, Army and National Security Services to require those forces to comply with all orders under the “terror threat situation”. It would also permit the army the use of firearms to prevent any violent acts during the declared emergency situation. This provision would breach international law and standards on the use of firearms by law enforcement officials, which require states, as part of their obligation to respect the right to life, to ensure that security forces comply with at all times – including in exceptional circumstances such as states of emergency.

The invocation of a “terror threat situation” essentially would amount to Hungary declaring a state of emergency and taking advantage of it to implement exceptional measures in breach of its human rights obligations. The declaration of a state of emergency, and any attendant derogations from a state’s generally applicable human rights obligations, are subject to a stringent test under international law. It must be only when necessary and to the extent required for a government to respond to an exceptional, identifiable, dangerous and imminent situation that threatens the life of the nation; in addition, any particular measures imposed under a state of emergency must be necessary and proportionate to confront that threat; such measures must be set out in law and must be applied in a non-discriminatory manner. The declared state of emergency and its attendant measures must be temporary in nature, with meaningful safeguards to prevent them from being extended beyond the duration absolutely necessary to meet the threat.

As currently presented, the proposed “sixth amendment” and associated legislative package is so broadly and vaguely worded that it does not meet all the strict tests required under international human rights law, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms, either with respect to the declaration of the state of emergency itself, or the specific measures to be taken under it, which provide wide scope for sweeping restrictions on the rights to freedom of association and peaceful assembly, privacy, and freedom of movement. Amnesty International remains concerned that such sweeping powers, with so few constraints, could be used arbitrarily by the government to target political opponents; human rights defenders; human rights, environmental, LGBTI, and other activists; and racial, ethnic, and religious minorities, among others. In particular, Amnesty International is particularly concerned at the wide powers for the security forces to use firearms in circumstances which go well beyond what is permitted under international law and standards and which, if death results, could violate the right to life.

States have a duty to protect people on their territory from imminent threats to life. But international human rights law sets clear criteria and limits on what governments can do to achieve that aim. Ill-defined laws are open to arbitrary application and abuse. Amnesty International calls on the Hungarian authorities to ensure that any proposal for Constitutional and legislative amendments intended to combat terrorism are in full conformity with Hungary’s international human rights obligations.

See also: *Hungary: Proposed “sixth amendment” to the Constitution would be a frontal attack on human rights*, AI Index: EUR 27/3359/2016, 1 February 2016, <https://www.amnesty.org/en/documents/eur27/3359/2016/en/>

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