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Hungary: Proposed “sixth amendment” to the Constitution would be a frontal attack on human rights

A draft proposal to combat terrorism, apparently authored by the Hungarian government and leaked in mid-January, recommends amendments to the Constitution (*Magyarország Alaptörvénye*, the Fundamental Law of Hungary) and to several laws to streamline the process to call a state of emergency in the country. If adopted in its current form, the proposal would have profoundly negative consequences for human rights in Hungary, including the freedoms of expression, assembly, association, and movement, and the rights to privacy and security of person. The current proposal, referred to as the “sixth amendment”, devolves near absolute power on the executive in a so-called “terror threat situation,” (“*terrorveszély-helyzet*”) the result of which would be a full frontal assault on human rights and the rule of law.

The draft proposal was leaked in excerpts — and eventually in full — to media and on social media platforms between 12 and 19 January. Various media outlets have reported that the ruling Fidesz-KDNP government – which no longer holds a parliamentary supermajority – is expected to table a slightly modified version of the proposal in Parliament in February.

In addition to the five existing Constitutional grounds for invoking a state of emergency (Article 48-54), the proposed “sixth amendment” would add a “terror threat situation” as an additional justification for the implementation of emergency measures. A “terror threat situation” would arise in a case where a “significant terror menace” existed and/or in case of a “terrorist attack.”

The proposal contains no definition of what would constitute a “terror threat situation”. Together with additionally proposed amendments to the laws on police, defence and the army, the Constitutional amendment would result in the promulgation of overly broad and vague counter-terrorism laws and wide scope for their application. Amnesty International is deeply concerned that such absolute power would be open to abuse by the executive, creating a climate ripe for human rights violations committed by state actors with impunity.

Indeed on 21 January, the Minister of the Prime Minister’s Office (*Miniszterelnökséget vezető miniszter*) suggested that such broad and expedited emergency powers could be used to deal with the sort of “terror threat situation” that allegedly occurred in Hungary during 2015, referring to minor clashes at the border and at a train station in Budapest among refugees and migrants, violent anti-migrant protestors and police, and the transiting on foot of refugees and migrants into and through Hungary in their quest for international protection.

The proposed Constitutional amendment would grant the executive unfettered discretion to declare a state of emergency, based on an ill-defined “terror threat situation,” for up to 60 days. The state of emergency could be extended for an additional 60 days upon approval of two-thirds of parliament. There are no meaningful safeguards in the draft proposal to ensure

that extensions of the state of emergency are truly justified by the exceptional circumstances of the situation and remain temporary, which paves the way for a limitless period of declared state of emergency.

The proposed amendment does not require judicial authorization nor parliamentary oversight nor any other meaningful scrutiny of the emergency measures. It simply requires the government to keep the President and relevant parliamentary committees “informed”.

The 30 specific emergency measures outlined in the draft proposal would be incorporated into law (in the Law on Defence and the Hungarian Army) and would grant stunningly wide latitude to the Hungarian authorities. No express provision is included in the proposal granting persons affected by the measures a right to challenge them or a remedy in case of violation. The measures include:

- Blanket permission to introduce undefined “special counter-terrorism measures”
- Complete government control over procurement of goods and services, including over supply lines
- Restrictions on the movement of foreign nationals, including refusal to enter the territory, despite Hungary’s existing obligations under international law
- Arbitrary restrictions on movement (including obligatory reporting requirements) for foreign nationals already lawfully present in the territory
- Enhanced stop and search powers
- Enhanced asset-freezing powers
- Powers to seize and limit broadcasters’ equipment, and to control the content and messaging of broadcasts
- Powers to suspend or limit the use of postal, telecommunication and email services
- Strict controls on internet usage and traffic
- Limitations or prohibition on contact and communication with foreign nationals and foreign organizations
- Prohibition of organized demonstrations and assemblies in public spaces
- Curfews in designated areas
- Restrictions on travel to and residence in certain areas of the country (including the possibility of forced relocation or evacuation, or restrictions on travel within the country)
- Deployment of armed forces in the national territory
- Suspension or limitation of the use of key transport and infrastructure

As the proposed draft “sixth amendment” and associated legislative amendments stand, they would likely go beyond what would be permitted under a legitimate state of emergency and violate the rights to free speech and expression, peaceful association and assembly, privacy, movement, and non-discrimination – and potentially the rights to liberty and fair trial. Amnesty International is concerned that such sweeping powers, with so few constraints, could be used 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.

States of emergency are subjected to a test under international law. A state of emergency must be necessary to meet an identified exceptional threat; in addition, measures employed under a declared state of emergency must be individually necessary and proportionate to confront a justified stated emergency; such measures must be enshrined in law and must be applied in a non-discriminatory manner; and the formal state of emergency and its attendant

measures must be temporary in nature, with meaningful safeguards to prevent them from being endlessly extended.

As currently rendered, the proposed “sixth amendment” — in combination with the legislative recommendations for the 30 emergency measures and linked reforms to the Law on Police, the Law on National Security Services, and the Law on Defence and on the Hungarian Army — would clearly fail the test of necessity and proportionality required in compliance with Hungary’s obligations under international law, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms.

States have a duty to protect people on their territory from imminent threats to life. But limits exist on what governments can do to achieve that aim. 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 obligations under international human rights law and international refugee law.

BACKGROUND

After acquiring a supermajority in parliamentary elections in 2010 and 2014 (conceded in early 2015), the Hungarian government, led by Viktor Orbán, and the ruling Fidesz-KDNP coalition have introduced a new Constitution and several laws weakening the protection of human rights. In 2011 and 2013, Amnesty International criticised the new Constitution and its subsequent amendment, which introduced provisions weakening the protection against discrimination on the basis of sexual orientation and gender identity; created a restrictive definition of family (excluding non-married couples and/or same-sex couples); and contained provisions allowing for life imprisonment without parole, as well as provisions allowing the criminalization of homelessness.

On 12 January 2016, in the case of *Szabó and Vissy v. Hungary* (application no. 37138/14), the European Court of Human Rights slammed the Hungarian legislation on surveillance powers. It considered that “section 7/E (3) surveillance” contained in Hungary’s Law on Police contravened the European Convention on Human Rights (Article 8, right to respect for private and family life). The court ruled that the relevant provisions of the law, in themselves, violated Article 8 as these enabled the ordering of surveillance measures “entirely within the realm of the executive and without an assessment of whether interception of communications was strictly necessary”, without providing any safeguards and effective remedial measures.

External Reference: The full list of measures can be accessed through the StateWatch website: <http://statewatch.org/news/2016/jan/hungary-emergency-powers.html>

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The case of *Szabó and Vissy v. Hungary* (application no. 37138/14) can be accessed here: <http://hudoc.echr.coe.int/eng?i=001-160020>

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