

The virus and the sick democracy

Getting it right? COVID19 restrictions and human
rights

Panel, 6 May 2020

The broader landscape - Ten years of democratic backsliding

Institutional	Personal / ad hoc	Social	Narrative /discourse
Constitutional court – cutting back powers	Filling it up with loyal judges	Corruption	„illiberal/Christian democracy”
Electoral system - gerrymandering - first pass the post	Chosing inactive but dependent MP-s, without any initiative	Dividing the society to „us” and „them” – no meaningful dialogue	Ethno-nationalist communitarian ideology – fight against liberal ideas
Court system – threatened independence	Forcing retirement of judges – strict control over leaders	Total disregard of the poor and the deprived	De-secularization – prominence of the churches – „Christian country”
Taking away powers of self government from municipalities	Disadvantaging opposition municipalities in disretionary support	Creating an educational system for the few – separate institution for future civil servants and law enforcement agents	Islamophobia – xenophobia -
Takeover of media, both public and commercial	Appointing biased, right-leaning journalists in public media	A „society of labour” (Orbán) – assembly line for multinationals	Sovereigntist discourse against external „colonial” powers („Brussels”)
Attacks against NGOs and independent institutions, including the CEU	Character-killing in public discourse.		Securitization

World Justice Project, Rule of Law Index, 2020 Hungary: 60th

The „state of danger”

11 March Government Decree declaring **the state of danger** - **unconstitutional in itself**, the Fundamental Law does not include the epidemic as a possible ground

Act on the containment of Coronavirus (Act Nr. 12 of 2020, in force since 1 April 2020) – **extends the situation without a deadline** and delegates legislative power (related to the defence against the epidemics) of the Parliament to the government.

Expansion of control

- **Military oversight over „vital Hungarian enterprises”**
- **Military control and direction of hospitals** – in matters related to the epidemics
- **Sending „home” thousands of hospitalised persons** in order to free up capacity – approximately 36 000 beds, when the number of infected persons in treatment is 1993 on 5 May 2020
- **Appropriation of local tax payed by business** to the municipalities
- **Banning of travel abroad of health professionals**

Freedom of speech

Act XII of 2020 (the „Empowerment Act) introduces a new form of scaremongering (Penal Code Section 337, **Fearmongering**)

(1) A person who, at a site of public danger and in front of a large audience, states or disseminates any untrue fact or any misrepresented true fact with regard to the public danger that is capable of causing disturbance or unrest in a larger group of persons at the site of public danger is guilty of a felony and shall be punished by imprisonment for up to three years.

Facebook is large audience!

(2) A person who, during the period of a special legal order and in front of a large audience, states or **disseminates any untrue fact or any misrepresented true fact that is capable of hindering or preventing the efficiency of protection** is guilty of a felony and shall be punished by imprisonment **for one to five years.**

Liberty - partial lockdown

Introduced for the whole country from **28 March** (17 days after state of danger announced)

Government Decree 71/2020 (27 March)

Limited to Budapest and Pest county from **5 May 2020** by 169/2020 Gov. D.

„Leaving a domicile, place of residence or private home shall be permitted only for a justified reason set out in this Decree”

21 such reasons (work, agricultural production, basic shopping, basic human services, repair-shops, sports and recreation)

relatively liberal, humane regime, not concentrating on sanctions

Easing for the countryside from 5 May – essentially free movement, but

- Masks are compulsory
- Separate period for shopping of the elderly 65+
- Restaurants, cafes etc. open, but sitting only on the terraces (not inside)
- 1,5 m distance to be kept
- No public events (except for funerals, weddings, religious gatherings)
- Schools remain closed, universities may open. Cultural institutions still closed

Is this discriminatory?
(Justification: more infected persons in Budapest and Pest county)c

Migration (border crossing)

Rules changed five times since 16 March

Essence: **inhuman and discriminatory**

Policy wise **contradicting the EU policy**

(EU conclusions on temporary restriction of non-essential travel to the EU, 17 March and the Commission guidelines)

16 March night: 46/2020 Government decree forbids the entry of any foreigner, except for citizens of the European Economic Area states who possess an EU residence card = more than 5 years continuous residence in Hungary



Excludes

- All (long term) resident **third country nationals**
- **EEA nationals** with who only have a registration card

Only individual exception possible by way of an application to the deputy of the National Chief of Police in charge of law enforcement

- in cases deserving special consideration, and
- the health inspection does not raise Covid issues

- Family unity
- Property rights
- Acquired rights
- EU mobility rights
- Non-refoulement

Migration (border crossing)

Present system (since 1 May) (based on Government Decree 81/2020 as amended)

Essentially the same exclusions, but

persons coming from the **Austria, the Czech Republic, Germany, Poland, the Republic of Korea and Slovakia** and being the national of one of them are exempt from the restrictions provided they are on „a trip for the reason of business between affiliated undertakings”.

In case of expulsion injunction against removal can not be applied for (85/2020 Gov. Decree)

Effective remedy?

The denial of the right to asylum

The right to asylum was gradually eliminated since 2015

- 2015 the **fence** at the border with Serbia and Croatia
- 2015 **Transit zones**- border procedure –**Serbia safe third country** – **criminalization of crossing** the fence 2015
- 2015 „**Crisis situation** caused by mass immigration” extended every six months
- 2017 **removal** from the territory of **Hungary every asylum seeker** who arrived or stays irregularly – gradual reduction of the number of asylum seekers admitted to the transit zones from Serbia (1 / day)
- 2018 **new safe transit country rule** as inadmissibility ground (See A. G. Bobek’s Opinion in L.H. C-564/18)
- 2019 **starving** of those rejected at administrative level
- 2020 **no admission** to the transit zone

Sick – or terminally ill?

- Certain **rights-limiting measures** are **justified and necessary** (Quarantine, social distancing, banning of assembly, etc.)
- **The impact** of Covid-19 **must be seen in a broader frame** of democratic decay including the destruction of the asylum system
- The **securitising discourse** and the military narrative („battle”) as well as the actual **involvement of the military** reinforces the perception of a **friend/foe** distinction instead of creating national unity
- In that context **demanding the necessity/proportionality evaluation** of the human rights limiting measures **qualifies the critic as foe**
- Reinforcing the **ethno-nationalist closure** and **excluding all without an EU residence card** was neither necessary nor proportionate
- The government uses Covid-19 to **further disqualify human rights and their defenders**, a step towards **making the sick democracy terminally ill.**

THANKS!

BOLDIZSÁR NAGY

E-mail:nagyb at ceu.edu
www.nagyboldizsar.hu