

The Prime Minister's Office

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To: **László Kövér, Speaker of the Parliament**

Subject: **Submission of a proposed law**

Submitted by: **Dr. Zsolt Semjén, Deputy Prime Minister**

Responsible: **Dr. Judit Varga, Minister of Justice**

Title of the proposed law: **On protecting against the coronavirus**

On behalf of the Government I hereby submit the proposed law on protecting against the coronavirus.

The following sections of the proposed law are considered cardinal:

*a)* section 2, pursuant to article 54 (4) of the Fundamental Law,

*b)* section 5, pursuant to article 24 (9) of the Fundamental Law,

*c)* section 6 (1), pursuant to article XXIX (3) and article 31 (3) of the Fundamental Law,

*d)* section 6 (2), pursuant to article XXIX (3), article 2 (1) and article 35 (1) of the Fundamental Law,

therefore a “yes” vote of two thirds of the parliamentary representatives is required for the Parliament to pass it.

**Act XII of 2020**  
**On Protecting Against the Coronavirus**

In order to ensure that the Government may take all necessary extraordinary measures required for preventing and mitigating the consequences of the COVID-19 human epidemic of 2020 causing mass infections, and keeping in mind especially that because of the human epidemic the work of the Parliament may be paused, in awareness of the fact that responsible decisions must be made in times of crisis, and although the measures introduced this far – and to be taken in the future – may seem to involve unusual and unfamiliar restrictions, complying with them, cooperating and being disciplined may prove to be the greatest asset of Hungarians, in recognition of taking joint action, coming together as a nation, and feeling thankful for the sacrifices made by health care workers, law enforcement workers and all others concerned, the Parliament passes the following law in respect of granting authorization to extend the effect of the Government's decrees that are issued in an state of danger and determining the framework thereof:

**Section 1**

This law determines the special rules pertaining to the state of danger (hereinafter: state of danger) decreed in Government Decree 40/2020. (III. 11.) on proclaiming a state of danger (hereinafter: Decree) pursuant to article 53 (1) of the Fundamental Law in order to prevent and mitigate the consequences of the human epidemic jeopardizing human life and property and causing mass infections and to protect the health and life of Hungarian citizens.

**Section 2**

(1) In such a state of danger the Government, – in addition to the extraordinary measures and regulations set forth in Act CXXVIII of 2011 on emergency management and the amendment of certain relevant laws – in order to guarantee for Hungarian citizens the safety of life and health, personal safety, the safety of assets and legal certainty as well as the stability of the national economy, may suspend the enforcement of certain laws, depart from statutory regulations and implement additional extraordinary measures by decree.

(2) The Government may exercise the competence granted in paragraph (1) – to the extent necessary and in proportion to the desired objective – for the purpose of preventing, managing, and eliminating the human epidemic set forth in the Decree as well as for preventing and mitigating its harmful effects.

**Section 3**

(1) Pursuant to article 53 (3) of the Fundamental Law, the Parliament authorizes the Government to extend, in the state of danger, the effect of the government decrees set forth in section 53 (1) and (2), until the end of the state of danger.

(2) The Parliament may withdraw the authorization set forth in paragraph (1) before the end of the state of danger.

(3) The Parliament confirms the government decrees specified in paragraph (1) that were enacted after the going into effect of the Decree and before the going into effect of this law.

#### **Section 4**

The Government shall provide information on a regular basis, during the Parliament's session – or in the absence thereof, for the Speaker of the Parliament and the heads of parliamentary representatives' groups – about the measures that are taken to avert the state of danger, as long as the effect of the measures is maintained.

#### **Section 5**

(1) The President of the Constitutional Court (hereinafter: President) and the Secretary General of the Constitutional Court ensure the continuous operation of the Constitutional Court in a state of danger and take the required organizational, operational, administrative and decision-making measures.

(2) The full session of the Constitutional Court and of the council can also be held via electronic channels, based on the decision of the President, until the end of the state of danger.

(3) In a state of danger the President may authorize a departure from the rules of procedure of the Constitutional Court.

#### **Section 6**

(1) If the dissolution of the body of representatives of a local authority or a minority authority is decreed, this decision will take effect on the day following the end of the state of danger.

(2) Until the day following the end of the state of danger, no by-elections can be held, and already scheduled elections will be cancelled. Distributed ballots must be returned to the election office within fifteen days after the law goes into effect, where they will be destroyed. Not yet scheduled and cancelled elections must be scheduled within fifteen days after the end of the state of danger.

(3) Until the day following the end of the state of danger, no national or local referendum can be initiated, and all already scheduled national and local referendums will be cancelled. All deadlines set forth in sections II-IV of Act CCXXXVIII of 2013 on initiating referendums, the European citizen's initiative and the referendum procedure shall be suspended.

The deadlines will resume on the day following the end of the state of danger. Not yet scheduled and cancelled national and local referendums must be scheduled within fifteen days after the end of the state of danger.

### **Section 7**

This law will take effect on the day after it is promulgated.

### **Section 8**

The decision on the expiry of this law shall be made by the Parliament upon the end of the state of danger.

### **Section 9**

Section

- a) 2 of this law, pursuant to article 54 (4) of the Fundamental Law,
- b) 5 of this law, pursuant to article 24 (9) of the Fundamental Law,
- c) 6 (1) of this law, pursuant to article XXIX (3) and article 31 (3) of the Fundamental Law,
- d) 6 (2) of this law, pursuant to article XXIX (3), article 2(1) and article 35 (1) of the Fundamental Law are considered cardinal.

### **Section 10**

(1) After section 322, the following sub-heading and section 322/A will be added to Act C of 2012 on the Criminal Code (hereinafter: Criminal Code):

#### **“Obstructing epidemic prevention 322/A. §**

- (1) Persons obstructing the implementation of
  - a) epidemiological isolation, observation, quarantine or control decreed for the purpose of preventing the introduction or dissemination of an infectious disease that is subject to a quarantine,
  - b) epidemiological isolation, observation, quarantine or control decreed during an epidemic,
  - c) plant health or animal health measures taken to prevent the importation, exportation and dissemination or to eliminate the existence of contagious animal diseases or plant quarantine pestsare considered a criminal act, punishable by up to three years of prison.
- (2) If the criminal act is perpetrated by a group, it is punishable by one to five years of prison.
- (3) If the criminal act causes death, it is punishable by two to eight years of prison.

(4) Persons initiating an obstruction of epidemiological measures commit a crime that is punishable by up to one year of prison.”

(2) Section 337 of the Criminal Code shall be replaced by the following:

**“Section 337**

(1) Persons who at the site of a public state of danger, before the grand public, claim or spread a falsehood or claim or spread a distorted truth in relation to the state of danger in a way that is suitable for alarming or agitating a large group of people at the site of the state of danger commit a crime that is punishable by up to three years of prison.

(2) Persons who under a special legal order claim or spread a falsehood or claim or spread a distorted truth before the grand public that is suitable for obstructing or preventing successful protection commit a crime that is punishable by one to five years of prison.”

## General justification

The COVID-19 epidemic that started in China last year has become a pandemic, and it has had a serious impact on all the countries of the European continent, including Hungary. Current medical knowledge does not offer a global solution for the epidemic, therefore each country must create its own strategy to protect itself against the coronavirus. Hungarians faced a similar task when we fought to prevent the collapse of the financial sector, we protected the country against flooding and handled the immigration crisis. In addition, in the framework of protecting itself from the virus, Hungary participates in all international cooperation initiatives and works very closely with neighboring countries. However, it has become clear that fighting against the coronavirus and protecting the Hungarian people is our own common task, and the important decisions must be made by the Parliament and the Government.

Consequently, the Hungarian Government, as of March 11, 2020, to protect the health and life of Hungarian citizens, decreed a special legal order and a state of danger for the entire territory of Hungary. Since then, the Government has introduced a number of measures with the aim of preventing and slowing down the propagation of COVID-19, as well as supporting the fight against the infection, protecting human health and subsequently mitigating the negative economic impact of the pandemic on Hungary.

The Parliament is aware that responsible decisions must be made in times of crisis, and that the measures introduced this far – and to be taken in the future – may seem to involve unusual and unfamiliar restrictions, but complying with them, cooperating and being disciplined may prove to be the greatest asset of Hungarians. Taking joint action, coming together as a nation, the sacrifices made by health care workers, law enforcement workers and all others concerned are the cornerstones of the widest possible national unity. By accepting the proposed law, the members of Parliament can contribute to creating and maintaining the national unity that is required in times of crisis.

Our Fundamental Law, which is the basis of our legal system, describes in a very detailed manner and complete with guarantees, which is remarkable even by international standards, what to do in extraordinary situations, in addition to outlining the role of each constitutional body. Accordingly, extending the effect of a state of danger past 15 days is the responsibility of the Parliament.

Based on the above, the purpose of this proposed law, in agreement with having a state of danger decreed by the Government in Government Decree 40/2020. (III. 11.) on proclaiming a state of danger (hereinafter: Decree) pursuant to article 53 (1) of the Fundamental Law in order to prevent and mitigate the consequences of the human epidemic jeopardizing human life and property and causing mass infections and to protect the health and life of Hungarian citizens, is to confirm all measures that have been taken since and to extend their effect pursuant to article 53 (3) of the Fundamental Law.

An additional purpose of the proposed law is to let the Government of Hungary enact and maintain the effect of its decrees containing extraordinary provisions if the Parliament does not meet for a reason that is related to the human epidemic caused by COVID-19 in 2020 and resulting in mass infections.

This justification will be published in the Directory of Justifications that is published as an annex to the Hungarian Official Gazette pursuant to section 18 (3) of Act CXXX of 2010 on law-making, as well as section 20 of the Decree 5/2019. (III. 13.) of the Ministry of Interior on the publication of the Hungarian Official Gazette as well as on referencing it with respect to the promulgation of statutory regulations and the publication of normative resolutions and orders.

## Detailed Justification

### **Section 1**

The proposed law makes it clear that granting authorization and creating special regulations pertain specifically to a state of danger decreed by the Government in order to prevent and mitigate the consequences of the human epidemic jeopardizing human life and property and causing mass infections and to protect the health and life of Hungarian citizens, as specified in the Decree.

The regulation makes it clear that the regulation cannot be implemented in any other state of danger, and that the regulation applies exclusively to this special legal order.

### **Section 2**

In keeping with article 53 (1) and (2) and article 54 (1) of the Fundamental Law, section 2 (1) of the proposed law permits the Government to take any measure and enact any normative regulation – in addition to the extraordinary measures and regulations set forth in Act CXXVIII of 2011 on emergency management and the amendment of certain relevant laws – that is necessary to guarantee for Hungarian citizens the safety of life and health, personal safety, the safety of assets and legal certainty as well as the stability of the national economy in relation to the human epidemic caused by COVID-19 in 2020 and resulting in mass infections.

Section 2 (2) states that the exclusive purpose of the normative regulations and measures set forth in paragraph (1) is to prevent, manage and eliminate the human epidemic specified in the Decree, and to prevent or mitigate the harmful consequences thereof. With regard to the extraordinary circumstances and the unpredictability of what measures may be required, the proposed law does not define in an itemized way the scope within which the Government can enact decrees and establish norms.

But at the same time, by stating the purpose of enacting decrees and establishing norms – by also taking into account the Fundamental Law, constitutional principles and the requirements of the rule of law – the proposed law grants the Government freedom to act as required by the

nature of the human epidemic. Naturally, the regulation set forth in section 2 (2) of the proposed law also guarantees that the Government will take the most necessary measures and furthermore will consider the proportionality of its interventions.

### **Section 3**

Section 3 of the proposed law includes an authorization that is set forth in article 53 (3) of the Fundamental Law. With respect to the substantive and temporal scope of the authorization, the proposed law takes into account that the Government's measures and relevant legal norms are set forth in several different government decrees, therefore the proposed law determines the scope of the government's decrees that may be extended on the basis of their regulatory scope instead of making only a simple reference to them. It is important to note that the authorization also applies to the measure to be taken by the Government in the future.

With respect to the temporal effect of the authorization, the proposed law defines a sufficiently abstract temporal framework for the eventuality that the Parliament may not meet for any reason that is related to the human epidemic caused by COVID-19 resulting in mass infections in 2020, especially in the event that the Parliament's session does not have a quorum, or if having a session with a quorum meet does not seem reasonable with respect to slowing down the epidemic caused by the COVID-19 virus. Therefore the proposed law extends the term of the authorization set forth in article 53 (3) of the Fundamental Law until the state of danger is terminated, but at the same time section 3 (2) of the proposed law specifies that this decision may be revoked, and additionally the Parliament also possesses the competence set forth in section 10 (3) a) of Act CXXX of 2010 on law-making.

We wish to underline that at the future sessions of Parliament with a quorum no decision needs to be made on maintaining the authorization pursuant to the above – it will remain valid *ex lege* – and a decision may only be required if the need arises to revoke the authorization. At the same time we wish to emphasize that the Parliament may revoke the authorization starting from the 16<sup>th</sup> day following the promulgation of the specific government decrees containing the measures, pursuant to article 53 (3) of the Fundamental Law. And based on the substantive framework of the authorization, the Parliament may revoke its authorization only with respect to certain measures enacted by the Government.

In addition, section 3 (3) of the proposed law states that the Parliament confirms the Decree and the government decrees that are enacted between the going into effect of the Decree and the going into effect of the proposed law, and thereby the Parliament acknowledges politically the measures that the Government has taken this far to prevent the epidemic.

### **Section 4**

As the Parliament has wide freedom to enact measures and establish legal norms, and because the temporal effect of the government decrees is not specified, the proposed law stipulates that the Government regularly provide information at the sessions of Parliament – or in the

absence thereof to the Speaker of the House and groups parliamentary representatives, on the measures taken in order to avert the state of danger, as long as the effect of the measures is maintained.

## **Section 5**

The proposed law, emphasizing that the operation of the Constitutional Court which is the highest body protecting the Fundamental Law, constitutes a special guarantee under a special legal order with respect to protecting the democratic rule of law, the constitutional order, the preservation of the internal harmony of the law and the enforcement of the principle of the division of power, stipulates that the President of the Constitutional Court and the Secretary General of the Constitutional Court ensure the continuous operation of the Constitutional Court in a state of danger and take all necessary organizational, operational, administrative and decision-making measures.

With this the proposed law allows that if it is possible for the Constitutional Court to operate continuously although with a departure from the effective provisions concerning its operation, the President of the Constitutional Court and the Secretary General of the Constitutional Court may let it do so. The proposed law expressly mentions the possibility of meeting via electronic communication channels, but this may not take place automatically; it is subject to the decision of the President of the Constitutional Court. The President of the Constitutional Court is also expressly authorized to allow the Constitutional Court to depart from its Rules of Procedure.

## **Section 6**

Pursuant to article 35 (4) of the Fundamental Law, a body of representatives – as set forth in a cardinal law – may decide to dissolve itself. The rule set forth in the proposed law – which is a cardinal law rule pursuant to article 31 (3) and article 35 (4) of the Fundamental Law – temporarily declares, for a specific time interval, in the event that the representative body of a local authority or a minority authority is dissolved, that the effect of the decision will start on the day after the end of the state of danger. This rule applies also when, pursuant to section 46 (4) of Act CXXVIII on emergency management and the amendment of certain relevant laws, the tasks and competences of the representative body of a local authority, the general meeting of the capital and the general meeting of a county are fulfilled and exercised by the mayor, the mayor of Budapest or the chairman of a county's general meeting.

For the above reasons, the Parliament stipulates the same rules in respect of the body of representatives of minority authorities.

Furthermore, if the personal participation of all voters may become necessary in the course of election or referendum procedures, it may seriously jeopardize the prevention of the human epidemic and the mitigation of its consequences. As such procedures do not stipulate any rules in respect of a state of danger, the proposed law stipulates that in a state of danger election and referendum deadlines be postponed, and by-elections or referendums be cancelled;

however, the date of an election or referendum that is cancelled in this manner must be fixed within fifteen days after the termination of the state of danger. Furthermore, with respect to the cancellation of already scheduled elections, the ballots that are in the possession of the candidates or the caucus must be returned to the election offices and, in accordance with the provisions of the law on the election procedure – by taking into account the basic principles of the election procedure – must be destroyed.

### **Section 7**

In order to ensure the immediate and effective handling of the state of danger, the proposed law stipulates that the effective date be the day following the promulgation of the law.

### **Section 8**

The Parliament makes it contingent on a subsequent decision of the Parliament that if the Government declares the end of the state of danger, then it will repeal the law granting the authorization, which means that the proposed law does not tie the effect of the law to the actual existence of a state of danger.

### **Section 9**

Section 2 of the proposed law, under the detailed rules applicable to a special legal order, pertaining to the measures taken and norms introduced by the Government in a state of danger, pursuant to article 54 (4) of the Fundamental Law, section 5 pertaining to the operation of the Constitutional Court, pursuant to article 24 (9) of the Fundamental Law, section 6 (1) on local authorities and minority authorities, pursuant to article XXIX (3) and article 31 (3) of the Fundamental Law, and section 6 (2) on parliamentary, local and minority authority elections, pursuant to article XXIX (3), article 2 (1) and article 35 (1) of the Fundamental Law, shall be considered cardinal.

### **Section 10**

1. The statutory definition, in terms of clear legal norms, of the coronavirus epidemic that may cause mass infections is especially justified because the epidemic's features are identical with the unified, authoritative characteristics of public danger as defined in law enforcement practice. Law enforcement defines the state of danger under criminal law in terms of an objective situation that may reasonably endanger the life and physical integrity of an indefinite or large number of people and cause the destruction or damage of assets of inestimably high value.

The coronavirus poses potential harm at a large scale nationwide. Therefore it is justified to assign occasionally criminal law criteria to the coronavirus epidemic, and where harm potentially exists if the virus is detected, then both fighting against it and ensuring public peace should be given priority.

The amendments of the Criminal Code specify protection under criminal law in the event of the threat of an epidemic, which is becoming increasingly more concrete in terms of place and time, as defined in the health care law, that is similar in nature to protection that applies to causing public danger.

In addition, the epidemic may cause a large number of illnesses practically anywhere in the country, therefore social masses are more likely to accept false information that may cause disturbance and turmoil, against which protection is required under criminal law to the same extent as against public danger, even if the appearance of the epidemic cannot be accurately defined in place and time.

2. The criminal act violating an enhanced, double protection of public safety and the new criminal act of impeding protection against the epidemic as specified above require a punishment for actively hindering the implementation of new measures in the event that the threat of an epidemic is declared both by the law and the authorities. The increased danger and therefore the more severe punishment compared to a simple epidemiological violation is justified by the fact that in this case the perpetrated act goes beyond a formal violation of rules and prevents specific protective measures by the authorities. The criminal act does not involve an assessment of the result, in other words, the failure of, or a disturbance in, providing the necessary protection does not figure in establishing the criminal act. Neither does the use of force or threat feature in establishing the criminal act, which means if one also acts violently against or threatens the official persons who participate in the protection, the perpetrator can be charged for multiple offences. The danger for society is significantly heightened if the criminal act is perpetrated by a group because it increases the impact of impeding protection. If the result is death as specified in the criminal act, the act will fall between impeding conducts of any type and manslaughter; the relevant dogmatic differentiation criteria are defined in legal practice. By penalizing preparatory action, the legislator may create early protection under criminal law, which tool the legislator wishes to take advantage of in this case.

3. The coronavirus epidemic is the basis of the special legal order that is applicable to the country as a whole. To demarcate a reasonable boundary between general threats of this nature and public danger is difficult but can be reasonably defined – in terms of the protection of public peace – if the legislator places under criminal law protection public peace related to threats that cause general disquiet nationwide, regardless of the location of the public danger. This solution carries the clear message that if the threat is so severe that because of it a special legal order must be implemented, the assessment of a criminal act disturbing public peace cannot depend on which smaller sections of the country the threat against masses is localized in. This is where the new, second type of scaremongering comes into the picture which extends the place of perpetration of scaremongering to the entire country. This expresses the most clearly that the freedom of speech with regard to the nationwide protection cannot include stating and disseminating facts that are known to be untrue. However, the constitutional requirement of proportionality under criminal law requires that statements that are not suitable for interfering with the effectiveness of protection and therefore do not have an

objective impact on public peace should not be punishable. The new criminal act category does not include a result under criminal law, therefore impeding or preventing in and of itself is considered a criminal act and the perpetrator can be punished, provided that the perpetrator's action can cause such offenses.

Protection related to a special legal order depends on the circumstances that give rise to the special legal order and the impact thereof on the country. The state of danger promulgated during the coronavirus epidemic applies to the entire country, the protective governmental measures apply to the entire spectrum of society from health care, education, restrictions on border traffic and economic measures. But at the same time, even though the scope of the protected object under the law is wide, heightened protection under criminal law is still justified in order to ensure that the statement and dissemination of false and therefore disturbing facts do not interfere with the effectiveness of protective measures aimed at mitigating the state of danger.

The status of the criminal act within the legal system justifies maintaining heightened protection of public peace under a special legal order, even after the end of the current epidemic that occasioned this regulation.