

WHAT DOES THE COVID-19 CRISIS MEAN FOR VICTIMS OF FRAUD?

Country: Spain

Information as of May 5, 2020

1. THE MOST CRITICAL PHASE OF THE CRISIS

- *As long as measures to prevent the spread of Covid-19 restrict freedom of movement: What are the effects of the Covid-19 crisis on civil justice?*

In Spain, the impact of the Covid-19 on civil justice has been immediate and very significant.

- *Is there special legislation on the effects of the crisis on civil justice?*

The effects of the Covid-19 crisis on civil justice are ruled to date, mainly, in the following legislation:

- Royal Decree no. 463/2020 of 14 March, declaring the state of emergency, extended until 10 May 2020; and
- Royal Decree-Law no. 16/2020 of 28 April, that addresses urgent measures regarding procedural, insolvency, organizational and technological matters, in connection with the Action Plan referred to in Royal Decree-Law no. 11/2020 of 31 March, along with other pieces of legislation here referred.

In addition, the Ministry of Justice is currently discussing other medium and long-term reform initiatives with the General Council of the Judiciary and other stakeholders.

- *Does the crisis have an effect on court hearings?*

The state of emergency meant the closure of the Courts, the stay of the proceedings and the adjournment of all hearings except those necessary to avoid irreparable damage (i.e. essential cases), as defined by the General Council of the Judiciary in different decisions.

During the state of emergency and in the three months after its conclusion, hearings will preferably take place by videoconference. Thus, resources regarding up-to-date computer software and equipment, as well as specific training of Court staff for the use of such technology will be of the essence.

- ***Does the crisis have an effect on deadlines (of procedural and substantive law)?***

Procedural deadlines are suspended as long as the state of emergency is in force, as well as statutes of limitation and expiration terms.

Suspended procedural deadlines will start to run again (the entire deadline) on the day immediately after the state of emergency finishes; deadlines to appeal decisions served during the state of emergency and twenty days afterwards will be doubled.

- ***Does the crisis have an effect on enforcement?***

All enforcement orders or events are suspended during the state of emergency, unless deemed essential.

- ***How do courts work during the crisis?***

Currently, due to the state of emergency, Courts in Spain only provide minimum or essential services. The operating volume of Courts at present is 10%, as reported by the Ministry of Justice. Regarding civil and commercial proceedings, the percentage of activity ranges between 1 and 5% depending on the specific geographic area and the implementation of teleworking by Court staff, which is currently very low or practically nil.

Electronic filings were already compulsory before the crisis. The electronic filing system was suspended for approximately a month until 15 April 2020 and though it is now possible to file writs, the General Council of the Judiciary has expressly requested lawyers to consider both reasonableness and proportionality criteria and to moderate the submission of writs, as deadlines are suspended and the Courts are still not working properly, in order to avoid the collapse of the system. The Ministry of Justice informed that the first week after the limitations were lifted (15 to 22 April) there was a 15% increase of filings with regard to the same week in 2019.

It is intended to expand the scope of activity of the Courts to the fullest extent possible while ensuring the compliance of social distancing: hearings by videoconference, limited access to Courts, the preference to contact Courts via e-mail and telephone or with prior appointment, as well as organisational measures of Court staff with morning and afternoon shifts and teleworking.

These measures will continue to be in force for three months after the end of the state of emergency. In addition, exceptionally this year 2020, the period between the 11th to 31st August shall be deemed fully operational in commercial and civil judicial matters, except bank holidays, as otherwise the whole month of August usually runs without hearings nor deadlines.

- ***How are particularly urgent matters handled, in particular requests for interim measures such as injunctions and freeze orders?***

During the state of emergency, all requests for interim measures such as injunctions and freeze orders are paralyzed, except in those essential cases previously mentioned.

- ***How do lawyers work during the crisis?***

Lawyers, as well as Court agents, belong to the group of workers that should operate from home, as teleworking has been declared preferential.

In addition, teleworking will be extended for at least two more months after the state of emergency ends.

- ***How do banks work during the crisis?***

Banks remain open during the state of emergency but the use of their websites, already developed, is encouraged. Customers can perform online the most usual banking and financial operations.

- ***Does the crisis have an effect on insolvency law?***

Given the severe economic consequences of the health crisis, the measures in insolvency proceedings are directed to efficiently address the most likely increase of insolvency matters and to avoid the liquidation of businesses in critical situation as a result of the crisis.

To date, insolvent debtors did not have to file petition of insolvency during the state of emergency; this timeframe has now been extended until 31 December 2020, if the insolvency was caused by the health crisis.

In addition, Courts will not admit petitions filed by the creditors for mandatory insolvency proceedings until December 31, 2020, and petitions filed by the debtor will have priority to creditor's petitions, even if the latter were previous.

Furthermore, some measures have been established in order to try to avoid a massive increase in the number of insolvent debtors going into liquidation.

For example, if the debtor foresees that he will not be able to fulfil a Court-approved creditors' or refinancing agreement, the debtor will be able to apply for its modification, instead of having to apply directly for liquidation as until now.

Also, some further measures have been enacted in order to reduce the length or the complexity of insolvency proceedings. In some cases, these measures will be in force for one or two years after the state of emergency, depending on the type of measure.

- *Are there any further effects not addressed in the questions above?*

The suspension of deadlines in arbitration proceedings has not directly been set by law and, in general, its suspension or the possibility of videoconference hearings depends on the specific arbitration Court.

2. FORECAST: AFTER THE CRISIS AND LONG-TERM EFFECTS

- *What are the consequences of the Covid 19 pandemic once the pandemic has abated, in the gradual return to a new normality and what are the long-term effects?*

The consequences are expected to be substantial due to a workload increase caused by both the suspension of existing proceedings and the new proceedings related to COVID-19, directly and indirectly, like insolvency matters and contractual disputes.

- *Which measures introduced during the crisis will be withdrawn immediately?*

The suspension of deadlines and the stay of proceedings (as well as the suspension of statutes of limitation) will be immediately withdrawn.

- *Which measures will remain in place?*

A good deal of measures shall remain valid for a certain period of time, some until 31 December 2020, others even for one or two years after the conclusion of the state of emergency, particularly those regarding the simplification of insolvency proceedings and those directed at avoiding the liquidation of the insolvent debtor.

Also, some proceedings (regarding mortgages, leases or insolvency in case of persons with non-commercial professional activity) will have preferential procedural treatment until 31 December 2020.

- *Will enforcement of economic crime, including be weakened due to the lack of financial?*

The success of the enforcement of economic crime and, in general, of the implementation of all these measures will be indeed connected to the financial resources available and to a continuous monitoring and an efficient adaptation to the development of the crisis.

- *Do you expect a rise of new anti-corruption prosecutions after the crisis?*

It is probable that economic crimes and corruption matters, as those related to social security fraud and subsidy fraud, will rise.

- *Will the ratio of third party funded matter rise?*

Third party funding is not very common in Spain; it will be interesting to check if the current crisis gives a boost to this particular area.

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