

APRIL 15, 2020

What does the Covid-19 crisis mean for victims of fraud?

Country: Bulgaria

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?

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

With a decision dated March 13, 2020 the Bulgarian National Assembly declared a State of Emergency (“SE”) on the territory of Bulgaria, which shall be in force (after a prolongation), at least until **May 13, 2020**.

In order to respond to the Covid-19 crisis Bulgaria has promulgated the Law on the Measures and Actions during the State of Emergency (**LMASE**), published and effective (with only minor exceptions) as of 13 March 2020, State Gazette Issue (SGI) No 28. Numerous other legislative acts were also amended with the Transitional and Final Provisions of the LMASE. In addition, the LMASE provides that the Minister of Health is entitled to introduce additional measures and restrictions. The LMASE was subsequently amended on 9 April 2020, SGI No 34 (the “**Amended LMASE**”) with a view to clarifying and refining the scope and content of certain provisions, where some of the major amendments concern the conduct of court hearings and the procedural and other related deadlines.

- Does the crisis have an effect on court hearings?
 - Do court hearings take place during the crisis?

LMASE in its initial version introduced a general **stay** for the period of the SE on all procedural terms on administrative, litigation, arbitration and enforcement proceedings, except for some urgent criminal proceedings and for extradition and European arrest warrant related proceedings. As a result for the most part the courts suspended their work. With the LMASE amendments dated 09.04.2020 the exceptions to the general stay were expanded and explicitly listed to allow for courts to adjudicate also on matters related, among others, to proceeding for securing the collection of evidence, interim relief proceedings, requests for suspension of preliminary execution (including in tax cases) of administrative acts, public procurement cases, and other explicitly listed cases. The Amended LMASE provides that the procedural terms, which were initially suspended with the promulgation of the Act as of 13.03.2020, and are now included in the extended exception list, shall start to run again as from **April 16, 2020**.

- Do court hearings take place in form of video conferences?

After the promulgation of the LMASE the courts were instructed by the Supreme Judicial Council (SJC) to reschedule all open hearings of cases – subject to the general stay, for dates after the initial end of the SE – 13 April 2020.

The Amended LMASE, however, provided for the general opportunity open hearings to be conducted **remotely** by the courts and by the Commission for Protection of Competition (CPC), subject to prior notification of the parties concerned and ensuring direct and virtual participation of the parties in the proceedings. Such possibility for a remote open hearing, however, is generally not regulated under Bulgarian criminal and civil procedural rules. SJC has still not adopted a decision on how courts have to organize remote open hearings in accordance with the latest amendments. The CPC did officially announce that it will conduct remote open hearings on all cases, falling under its jurisdiction (and not only in respect of public procurement cases). The Supreme Administrative Court has also declared that it review cases in open hearings under special sanitary and hygienic conditions and restrictive regime for access, established by the Court in a special order.

- Does the crisis have an effect on deadlines (of procedural and substantive law)?
 - Are deadlines of ongoing proceedings affected?

The deadlines for ongoing proceedings are affected by the general stay of procedural deadlines (except for the explicitly listed cases) for the entire period of SE (see above). In order to mitigate the effect of potential excessive delays of the hearings, the Amended LMASE abolished the annual court vacation between July 15 and September 1st as this period will be used by the courts to catch up with the delayed cases. Also, court hearings postponed due to the SE, shall be scheduled with priority over cases initiated during the SE.

- Are deadlines for bringing actions affected (limitation periods)?

With its promulgation, LMASE regulated that limitation periods and “other terms” related to the exercise of rights or performance of obligations of private persons shall be **suspended** for the period of the SE. Those elapsing during the SE shall be prolonged with **one additional month** after the end of the SE. The Amended LMASE narrowed down the provision on suspension of limitation periods and stipulated that only those with the expiry of which the rights of **private persons** are extinguished or acquired, shall be prolonged. Thus, the respective deadlines for bringing action will be stayed accordingly.

According to the 07.04.2020 SJC decision courts shall accept new claims submitted during the SE and allocate them to a judge without, however, serving them to the opposing parties.

Does the crisis have an effect on enforcement?

- Are enforcement orders issued?

Enforcement orders are issued in relation to cases, which are excluded from the general stay on proceedings (see above).

Also, in order to mitigate the expected negative effects of the economic crisis, the LMASE provides that no attachments shall be imposed (i) on bank accounts of individuals and medical establishments, (ii) with respect to salaries and pensions, (iii) no interim measures with respect to medical apparatus and equipment, as well as (iv) no inventory on movable property and real estate owned by individuals shall be issued/conducted, except for liabilities for payment of family allowances, tort compensation and salaries.

- Are there any effects on deadlines?

Besides the suspension and prolongation of certain limitation periods, during the SE all public sales and enforcement of the possession over immovable property by public and private enforcement agents shall be suspended. After the SE ends, public sales and possession enforcement actions shall be announced again, without new fees and charges being due.

- Can enforcement acts be postponed due to the crisis?

See above.

- How do courts work during the crisis?

- Are courts closed?

Yes, courts are closed for the general public, except for the parties and their lawyers in relation to cases which can be heard during the SE (see above). Judges are instructed to work remotely when possible. Documents and claims by the parties shall be submitted electronically or via mail only. Physical submission of documents is not allowed.

- Can courts / judges be contacted?

Any checks in relation to ongoing proceedings are to be conducted electronically or via phone with the courts' administration. As usual, judges could be officially contacted with regard to certain cases only in writing, subject to the aforementioned conditions for remote filing.

- Are documents served?

Documents are not served to the parties. However, courts are instructed by the SJC to issue their decisions/orders and to upload them in their electronic data base, which is available to the parties. As no documents are served, the procedural deadlines for challenging the decisions/ orders are not running during the SE.

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

The amendments to the LMASE allowed for instituting proceedings for preservation of evidence and for interim relief (freezing) orders in relation to proceedings for securing future or pending claims.

How do lawyers work during the crisis?

Lawyers are allowed to visit the courts only if they have to appear at an open hearing or to review case documents in relation to such an open hearing. Lawyers have to request access to the court building prior to the date of the hearing via email, phone or mail and are required to comply with the respective sanitary and hygienic measures, adopted by the courts.

- How do banks work during the crisis?

Banks are allowed to continue their normal working activity subject to adopting particular sanitization and other precautionary measures.

- Does the crisis have an effect on insolvency law?

No special provisions on insolvency matters have been adopted. The general stay of procedural terms and terms of limitation for the period of SE shall also apply to insolvency proceedings *mutatis mutandis*, as they have not been included in the list of cases where the general stay would not be applied.

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

Notary services are allowed, but are limited to **urgent matters** only. For that purpose, the Notary Chamber shall provide notaries on duty with a ratio of at least one notary per 50,000 citizens for the respective area. However, as the term „urgent matter“ regarding notary proceedings is not legally defined, the respective notaries in charge during the SE can determine what matters are urgent at their sole discretion. In terms of practice, however, most of the notaries would normally require that the parties consult and agree in advance over the telephone or other means of remote communication the necessary action/service in order to comply with the sanitary and hygienic requirements and the requirement of urgency.

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?

- Which measures introduced during the crisis will be withdrawn immediately?
- Which measures will remain in place?
- Will enforcement of economic crime, including corruption matters be weakened due to the lack of financial resources?
- Do you expect a rise of new anti-corruption prosecutions after the crisis?
- Will the ratio of third party funded matter rise?

It is too early to predict which measures will be immediately dropped after the state of emergency and which will remain in force. It is also unclear at this point how long the state of emergency itself will continue. The same applies to how the crisis will affect the future development of social and economic relations. So far, governments and international institutions are unanimous on the expected deep

recession in 2020, and perhaps 2021. As it is well known, during the recession periods, as a rule, crimes are also on the rise. We do not expect, however, enforcement of economic crimes to be weakened due to the lack of financial resources after the crisis, as such activity is essential for the functioning of the state itself. As regards the third party funding, it has not been very well developed and popular in Bulgaria until now, so it is unclear how it will be affected in the aftermath of Covid-19 crisis.

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