

## 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? *The legislator introduced far-reaching changes to the General Part of the German Civil Code and the Law of Obligations to lessen the financial aspects of the Covid-19 pandemic for employees, self-employed and small enterprises but refrained from changes to the Civil Procedures.*
- Does the crisis have an effect on court hearings? *As a general rule, no. The lawmaker refrained from interfering with the independence of judges as guaranteed by the German Constitution in ordering a general closing of courts. However, physical access to the court houses has been restricted to a minimum by the competent Ministries of Justice of the German States.*
  - Do court hearings take place during the crisis? *It depends very much on the judge competent if hearings take place or not. However, the general practice is that necessary oral hearings have been postponed and will be re-scheduled once the restraining orders of the States will be lifted or narrowed.*
  - Do court hearings take place in form of video conferences? *Section 128a Civil Procedures allows for video conferences in civil proceedings, however, this instrument has not yet been used widely in the past and the technical equipment is not available at every court or in sufficient numbers.*
- Does the crisis have an effect on deadlines (of procedural and substantive law)? *No.*
  - Are deadlines of ongoing proceedings affected? *Procedural deadlines of ongoing civil proceedings are not affected. However, most judges are likely to extend deadlines on request in cases where e.g. documents are not available electronically but stored in the (unattended) offices of the clients.*
  - Are deadlines for bringing actions affected (limitation periods)? *No.*
- Does the crisis have an effect on enforcement?
  - Are enforcement orders issued? *Yes.*
  - Are there any effects on deadlines? *No.*
  - Can enforcement acts be postponed due to the crisis? *No special legislation has been passed on this issue. The court bailiffs remain in service but will try to avoid direct contact with creditors unless absolutely necessary.*
- How do courts work during the crisis?

- Are courts closed? ***The courts remain open. However, to protect the employees of the court the Ministries of Justice of the States have ordered home office wherever possible.***
- Can courts / judges be contacted? ***Yes. There might be some delay in response due to the number of requests. Most contacts will be handled by phone.***
- Are documents served? ***Yes.***
- How are particularly urgent matters handled, in particular requests for interim measures such as injunctions and freeze orders? ***Requests in urgent matters are continuously accepted and will be decided on an emergency basis. As the judges try to avoid scheduling oral hearings in general and in emergency matters it can be observed that requests for decisions ex-parte might be ordered under a special ruling for security.***
- How do lawyers work during the crisis? ***Most lawyers will work remotely from home and trying to limit the number of employees in the office to the absolute minimum.***
- How do banks work during the crisis? ***While banks have closed between half to two third of their local branches, main offices and branches remain in operation. No substantial delay in banking services has been reported yet.***
- Does the crisis have an effect on insolvency law? ***The statutory duty for enterprises to file for the opening of insolvency proceedings within 3 weeks latest after they have become unable to pay their dues or over-indebted has been suspended till 30 September 2020. However, this adjournment applies only if the illiquidity or over-indebtedness is a direct consequence of the Corona pandemic. Moreover, the right for creditors to file for the opening of insolvency proceedings has been limited. Applications of creditors filed within a 3 months period after the law has been amended (i.e. 27 March 2020) are only admissible if illiquidity or over-indebtedness was present before 1 March 2020. Finally, the right of the liquidator to contest actions of the debtor which granted or facilitated an insolvency creditor a security or satisfaction cannot be brought in a subsequent insolvency proceeding unless the creditor is aware that the restructuring efforts were not convenient to eliminate the illiquidity. The lawmaker has authorized the Federal Ministry of Justice to prolong these exceptions till 31 March 2021 if necessary.***
- Are there any further effects not addressed in the questions above?

## 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? *The Lawmaker chose the possibility to limit the duration of the additional laws in consequence of the Covid-19 pandemic till 30 June or 30 September 2020 respectively.*
- Which measures will remain in place? *The measures implemented in civil and criminal procedural laws and insolvency law are designated to assist in overcoming the current problems only.*
- Will enforcement of economic crime, including corruption matters be weakened due to the lack of financial resources? *Economic crime has not been in the focus of the legislator and the governments for many years and the situation will remain unchanged due to my experience. It may only be the case that some prominent cases arising from the misuse of public financial support during the pandemic will be prosecuted by the competent authorities but without relying on the private sector or lawyers.*
- Do you expect a rise of new anti-corruption prosecutions after the crisis? *Due to the fact that the Federal Government as well as the Governments of the States are offering economic emergency assistance for nearly all persons and companies effected by the pandemic the first cases of misuse have already been reported and fraud has become an even serious problem. It has been reported that unknown fraudsters have already set up an internet site very similar the one of the Government of Nordrhein-Westfalen for small businesses, directed the persons seeking help and funding to their own website, stole all the data to be provided by the applicants and used this data to file own applications directing the payments to their accounts.*
- Will the ratio of third party funded matter rise? *As Germany has a robust system of legal aid in place third party funding has been and will remain a rather uncommon way of access to justice.*

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