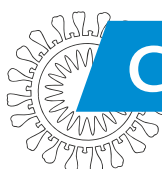




# IMPLICATIONS ON LEGAL PROCEEDINGS BEFORE NATIONAL COURTS AND ARBITRAL PROCEEDINGS



**COVID-19 PANDEMIC**

**MARCH 2020**

## **I**

### Introduction

The COVID-19 pandemic (coronavirus) and the measures adopted by Romanian authorities in relation thereto have the potential of significantly affecting the activity carried out before national courts and other institutions with jurisdictional attributes such as arbitration courts and arbitral tribunals, respectively.

Considering the impact of the COVID-19 pandemic on the legal proceedings before national courts

and arbitral tribunals, which in many cases can lead to an impossibility of appearing before the court or arbitral tribunal, or difficulties in observing deadlines for submitting written submissions or other procedural acts, the lawmaker has adopted a series of measures aimed at safeguarding the rights of persons who are parties in such proceedings, the main measures which are presented in section II below.



II

## Main effects on the legal proceedings before national courts and on arbitral proceedings

1

### Does the COVID-19 pandemic have any effect on limitation and time bar periods?

**Yes**, according to Art. 41 of Chapter V from the President Decree instituting the emergency state in Romania dated 16 March 2020 ("President Decree"), no limitation and time bar periods will start to run and, if such have started to run, are stayed during the entire emergency period instituted through the President Decree, i.e. 30 days as from 16 March 2020.

The stay applies to both legal and contractual, substantial and procedural time bar periods, since Art. 41 refers to limitation and time bar periods "of all kinds".

According to the general rules on limitation periods, after the stay cause has ceased, the limitation period is resumed, the time before the stay being considered for the computation. However, the limitation period will not lapse before 6 months have passed from the date the stay has ceased, except for limitation periods of 6 months or shorter, which will lapse only after a 1-month period has passed since the stay has ceased.

Conversely, the limitation and time bar periods running and lapsing before the issuance of the President Decree on 16 March 2020 are subject to the general Civil code provisions referring to the stay of the limitation period. According to Art. 2532 point 9 of the Civil code, the limitation period is stayed if the person against whom the limitation is running or will run is prevented by a *force majeure* situation to perform acts interrupting such course, for the entire period in which the *force majeure* situation continues; when the *force majeure* is temporary, the stay operates if such cause has occurred during the last 6 months before the limitation period lapses.

However, the general circumstances created by the COVID-19 pandemic could not be, alone, qualified as a *force majeure* case preventing the party to perform acts of interruption of the limitation period. Particular situations, such as persons who have been quarantined in state facilities or in hospitals might be considered as *force majeure* but a qualification will be made on a case by case basis by the court or arbitral tribunal.

2

### May civil legal proceedings before national courts be stayed due to the COVID-19 pandemic?

**Yes**, as a rule all civil proceedings are automatically stayed during the emergency state, i.e. 30 days starting from 16 March 2020. The parties do not have to submit any request to this end (Annex 1, Art. 42 (6) of the President Decree).

The only legal proceedings which will continue to be solved during the emergency state by

Romanian courts are those pertaining to extremely urgent causes. The list of such causes is to be established by the management board of the High Court of Cassation and Justice – for causes under its jurisdiction and by the management boards of Courts of Appeal for causes under their jurisdiction and under the



jurisdiction of courts operating in their territorial precinct (Annex 1, Art. 42 (1) of the President Decree).

For these types of legal proceedings, courts may set short hearing dates, including from one day to the next or even on the same day (Annex 1, Art. 42 (2) of the President Decree).

By Decision no. 417/24.03.2020 issued by the Superior Council of Magistracy, the Section for Judges, in view of ensuring a uniform practice regarding the manner of establishing the causes which are solved during the emergency state, it has been decided that during the emergency state the following non-criminal causes shall be solved:

**a) Lower courts:**

- Protection order;
- Guardianship;
- Non-voluntary medical admission;
- Approval of enforcement proceedings;
- Precautionary measures;
- Preservation of evidence;
- Procedural incidents in those causes that are solved during the emergency state, including requests for the correction, interpretation and amendment of the judgment;
- Any other requests that concern exceptional situations, which can be considered of utmost urgency.

**b) District courts:**

- Stay of enforcement of decisions;
- Stay of provisional enforcement;
- Protective measures regarding minors – Law no. 272/2004;
- Precautionary measures;
- Provisional stay of enforcement proceedings;
- Stay of enforcement proceedings;
- Presidential ordinance;
- Preservation of evidence;
- Guardianship;
- Protection order;

- Retention of ship;
- Stay of execution of administrative acts;
- Public procurement disputes concerning strictly medical products and other procurements regarding the emergency state, as well as those deriving from the performance of such contracts or that concern the application of measures in the emergency state field;
- Requests regarding the insolvency of legal persons based on art. 66 (1) of Law no. 85/2014;
- Jurisdiction conflicts and procedural incidents in causes which are solved during the emergency state, including requests for the correction, interpretation and amendment of judgments;
- Any other request that concern exceptional situations, which can be considered of utmost urgency.

**c) Courts of appeal:**

- Stay of execution of decisions;
- Stay of provisional enforcement;
- Measures for the protection of minors – Law no. 272/2004;
- Precautionary measures;
- Presidential ordinance;
- Preservation of evidence;
- Stay of execution of administrative acts;
- Public procurement disputes concerning strictly medical products and other procurements regarding the emergency state, as well as those deriving from the performance of such contracts or that concern the application of measures in the emergency state field;
- Disputes regarding the status of foreign citizens, based on GEO no. 194/2002;
- Displacement requests, conflicts of jurisdiction and procedural incidents in causes that are solved during the emergency state, including requests for the correction, interpretation and amendment

- Displacement requests, conflicts of jurisdiction and procedural incidents in causes that are solved during the emergency state, including requests for the correction, interpretation and amendment of judgments;
- Any other requests that concern exceptional situations, which can be considered of utmost urgency.

Courts may also solve cases which, according to the law, are heard without the parties' summoning.

The extremely urgent cases may be postponed on request, in cases where the interested party is self-isolating at home, is in quarantine or hospitalized in the context of the COVID-19 pandemic.

**3**

### Does the COVID-19 pandemic have any effect on the legal periods for formulating remedies/appeals? Are these periods stayed or interrupted?

**Yes**, the periods for formulating legal remedies/appeals in civil proceedings, other than those referring to extremely urgent causes, which are running at the date the emergency state has been instituted, are interrupted during the 30-day emergency state, which starts to run as of 16 March 2020. A new period of the same length will run from the date the emergency state has ceased.

In those cases where remedies/appeals were filed before the President Decree was issued, the files will be forwarded to the competent court after the emergency state has ceased (Annex 1, Art. 42 (7) of the President Decree).

We highlight that the interruption does not operate as regards legal periods for formulating remedies/appeals which lapsed before the emergency state was instituted. In such cases if the party was unable to submit the legal remedy/appeal due to the situation generated by COVID-19, the general Civil procedure rules referring to reinstatement in term could apply. Art.

186 of the Civil Procedure Code provides that the party who missed a procedural term shall be reinstated in such term only if it can prove that the delay was caused by a justifiable solid ground. To this end, the party has to submit the procedural act 15 days at the latest (or in the case of remedies/appeals in the same period provided for the remedy/appeal in question) after the ground has disappeared and request a reinstatement in the term. In case that the period of time for the reinstatement in the term is running at the moment when the state of emergency was instated, i.e. 16 March 2020, we are of the opinion that this period may also be considered as stayed, under art. 41 of the President Decree (see above question no. 1).

Depending on the particular circumstances of fact, the COVID-19 epidemic could be a justifiable solid ground for the reinstatement in the term even before the date when the emergency state was instituted; however, the courts have complete discretion in this regard.

**4**

### May enforcement proceedings be stayed due to the COVID-19 pandemic?

**Yes**, in those cases where sanitary discipline measures established by the National Committee for Urgent Special Situations cannot be observed, for the purpose of protecting the right to life and

physical integrity of participants to the enforcement procedures (Annex 1, Art. 42 (5) of the President Decree).



5

## Does the COVID-19 pandemic have the same effect on arbitration proceedings as it does on legal proceedings before national courts?

The President Decree does not refer expressly to arbitration proceedings. However, for the same reasoning, the rules referring to the proceedings before courts should apply to arbitration proceedings with the seat of arbitration in Romania as well.

In order to confirm the application of such rules to arbitration proceedings, parties should submit requests to the Arbitral Tribunal for the stay of proceedings, prolongation of arbitration hearing dates or of any other term set for written submissions, expert reports and other procedural acts.

International as well as domestic arbitration institutions have already communicated to their users the measures implemented in the context generated by the COVID-19 situation. For example, ICC Paris has advised that all communications with the Secretariat be conducted by email and that new requests for arbitration should be filed also by

email. As regards pending proceedings, if there is any need to send correspondence by courier or post, the case management team must be informed promptly ahead of dispatch. As for hearings and other meetings scheduled to take place at the ICC Hearing Centre in Paris until 13 April 2020, these have been postponed or cancelled.

Likewise, the Court of International Commercial Arbitration pertaining to the Romanian Chamber of Commerce and Industry is recommending arbitrators to postpone hearing dates set for the period between 16 March and 16 April 2020, with the preliminary consultation of the parties. Furthermore, telephone conferences, video conferences and electronic communication of documents are promoted instead of the traditional means of communication.

6

## Is the legal period for challenging an arbitral award stayed or interrupted due to the COVID-19 pandemic?

Although the action for annulment against an arbitral award rendered in an arbitration seated in Romania is not considered a remedy/appeal, the President Decree rule providing the interruption of legal periods for remedies/appeals should apply *mutatis mutandis*. Therefore, if the legal period for

the action for annulment against an arbitral award is running at the date when the emergency state has been instituted, i.e. 16 March 2020, this term shall be interrupted, and a new term of the same length shall run as from the ceasing of such emergency state.





**7**

## What is the effect of the COVID-19 pandemic on criminal legal proceedings?

As a rule, ongoing criminal cases before national courts, including those in the preliminary chamber procedure, are automatically stayed during the emergency state. The rule does not apply to the following cases:

- cases where the urgency is justified by the purpose of instituting the emergency state at a national level, or other cases which are considered urgent by the prosecutor supervising or conducting the prosecution;
- cases referring to flagrant crimes;
- cases in which preventive measures have been ordered;
- cases referring to challenges against precautionary measures;
- cases involving international judicial cooperation in criminal matters;
- cases including victim and witness protection measures;
- cases referring to the provisional application of medical security measures;
- cases referring to crimes against national security, terrorist acts or money laundering (Annex 1, Art. 43 (2) of the President Decree).

**8**

## Does the COVID-19 pandemic have any effect on the criminal liability limitation period?

**Yes**, during the emergency state period, in those cases where no prosecution acts are conducted or the criminal case is stayed according to the

President Decree, the criminal liability limitation period is stayed (Annex 1, Art. 43 (8) of the President Decree).

**III**

## Conclusions

Considering the measures presented above, as well as the fact that these include exceptions in most of the cases, it is recommendable that a particular analysis is performed in each specific situation in order to establish whether a particular procedure is stayed or if a particular procedural term is deferred, so as to avoid any time bar.

Such an analysis, with support from specialized

legal counsel is all the more so needed in case of arbitral proceedings, since the President Decree does not expressly regulate the impact on arbitration. As such, an efficient and swift communication with the arbitral tribunal is necessary, in order to establish on a case by case basis the corresponding readjustment of the procedural calendar.

**Note:** This analysis is based on the legal provisions in force as of 26 March 2020, being subject to any amendments that future enactments may require.



## CONTACTS

### PNSA COVID-19 LEGAL RESPONSE TEAM

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**Raluca Petrescu**

Partner

raluca.petrescu@pnsa.ro

**Mihaela Ion**

Partner

mihaela.ion@pnsa.ro

[www.pnsa.ro](http://www.pnsa.ro)