

12.6.2020

**Country: Serbia**

 **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?

On May 6th 2020 the National assembly of Serbia ended the state of emergency that was in force from March 15th 2020 and the restrictive measures related to the subject of this report were either significantly mitigated or revoked altogether.

The following previously issued acts are now revoked:

- 1) Decree on deadlines in court proceedings for the duration of state of emergency enacted on March 15th 2020, which was issued on March 20th 2020.
- 2) Recommendation of Ministry of justice on the regime of work of courts and public prosecutors offices during the state of emergency that was enacted in Republic of Serbia on March 15th 2020, which was issued on March 17th 2020. As a consequence, the conclusion of the High Judicial Council on proceedings which would be postponed, delivered on March 18th 2020, lost its legal effect.
- 3) Instructions of the Chamber of public enforcement officers on the regime of work of public enforcement officers during the state of emergency enacted in Republic of Serbia on March 15th, 2020, issued on March 18th 2020.
- 4) Recommendation on the regime of work of Public notary offices during the state of emergency enacted on March 15th, 2020, which was issued on March 17th 2020. The public notary offices resumed working as they do in ordinary circumstances.

The chairmans of courts have modified the issued instructions on the regime of work of the court (which are still in force), as there are still restrictions in place to help prevent the spread of COVID-19.

Does the crisis have an effect on court hearings?

The courts have resumed work in full capacity as of May 11th 2020 and all court hearings are held as scheduled from this date (during the state of emergency the majority of hearings were postponed).

Due to the number of postponed hearings during the state of emergency, the hearings are scheduled at a later date than in ordinary circumstances. Therefore court proceedings will last longer as a consequence.

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

The crisis does not have an effect on deadlines anymore. The decree on deadlines in court proceedings for the duration of state of emergency enacted on March 15th 2020, which was issued by the Government of Republic of Serbia on March 20th 2020 was revoked when the state of emergency was ended on May 6th 2020.

From this date all of substantive and procedural deadlines that did not expire during the state of emergency continue to expire.

Does the crisis have an effect on enforcement?

The crisis does not have an effect on enforcement anymore. After the state of emergency has ended on May 6<sup>th</sup> 2020, courts and public enforcement officers started issuing enforcement orders and performing all of the enforcement acts as usual in all matters.

Due to the number of accumulated cases during the state of emergency, courts and public enforcement officers are issuing enforcement orders and performing enforcement acts slower than usual.

There are also no more restrictions regarding deadlines in the enforcement proceedings – all of the deadlines continue to expire from the day the state of emergency ended.

How do courts work during the crisis?

The courts are working at full capacity and mostly in a manner as they do in ordinary circumstances. However, at the time of writing there are still some measures in force in court buildings to help prevent the spread of COVID-19. Namely, all employees, as well as the persons that are entering the court building must wear protective masks, and it is also advisable to use gloves. Also, all persons entering the court building must disinfect their hands at the entrance. The hearing may be held in bigger court room if the judge makes that decision, depending on the number of persons that will be present at the hearing.

There are no more restrictions regarding the submission of briefs, and parties may submit their briefs in all matters.

The courts also started delivering writs, briefs, summons and other court mail as usual, however due to the number of briefs, writs and other documents that accumulated during the state of emergency the delivery to the parties is slower than in ordinary circumstances.

How do lawyers work during the crisis?

Most of the lawyers work as they do in usual circumstances. As a measure of precaution, some law offices have alcohol based fluid posted by the entrance for hand disinfection.

Most of the lawyers schedule and hold meetings in person with clients.

How do banks work during the crisis?

Banks have returned to a regular work regime. Most of the banks do not require clients to wear protective masks or gloves.

Does the crisis have an effect on insolvency law?

Given that courts returned to a regular work regime, there are no more direct effects on insolvency law as there were during the state of emergency. As for indirect effects, insolvency proceedings will last longer than usual, due to the fact that hearings were postponed during the state of emergency and that court mail was not sent to parties.

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

The effects that were mentioned in the previous report are still the same after the state of emergency - companies will be mostly financially crippled after the crisis, therefore when they find themselves in the capacity of the debtor, the collection process will be significantly impeded and maybe disabled entirely. On the other hand, the creditors will have less monetary assets to invest in court proceedings, debt collection and asset recovery proceedings.

 **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?

As foreseen in the previous report, court proceedings and enforcement proceedings are resumed. All of the hearings that were not held during the state of emergency are rescheduled for another date or were already held. This will affect the length of proceedings in the future, and the creditors will wait longer to receive an enforceable document – judgment. This will also lengthen the proceedings before the Appellate courts and the Supreme cassation court because of too much new cases entering the court at once. Due to the accumulation of correspondence of parties in the proceedings, technical errors regarding serving and errors in the serve records arose in some proceedings, and some of the scheduled hearings were postponed.

Which measures will remain in place?

The measure taken during the crisis, which is still in effect, is the following: the Government of Serbia issued a decree on fiscal benefits and direct financial benefits to companies in the private sector and monetary help to citizens with a goal to mitigate the economic consequences of COVID-19 (in effect beginning from April 10<sup>th</sup>, 2020). From the provisions of this decree stems that companies that are using direct financial benefits will open a special bank account for this purpose. Monetary assets on this special bank account are exempt from enforced collection, except on the order of the Tax administration if a company loses the right to these benefits. These special bank accounts are closed when the decree goes out of effect, if the company loses or didn't fulfill the rights to these benefits at all. If the assets from this special bank account were not transferred to another bank account of the company in the moment of closure, these assets will be returned.

Will enforcement of economic crime, including corruption matters be weakened due to the lack of financial resources?

An anti-corruption department was founded at the Republic public prosecutor's office in 2008. In 2010 anti-corruption departments were founded at Appellate and Higher public prosecutor's offices in 4 main cities for whole state. These department already had a lot of cases and before the crisis they had very modest capacities and resources. It is to be expected that after the crisis it will have even less. Because they will be overloaded with new cases and still with lack of capacity.

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

No. Given that Republic of Serbia has the ones that were founded in 2008 and 2010, it is not to be expected that another one will be founded.

Will the ratio of third party funded matter rise?

Third party funding are formally not allowed in Republic of Serbia. Only parties in the proceedings may have the obligation to pay the expenses of the proceedings at its end. Effects of third party funding may be obtained through the contractual institute of change of creditors (cession), where the receivable from a certain contract is transferred to another creditor. This is not third party funding, but sale of a receivable to someone that becomes a new creditor. There are three possible situations where this can be done: before the litigation, during the litigation and after the litigation. If the cession is done before the litigation, a contract is concluded between the previous creditor and the new creditor, who gains all the rights of the previous creditor. There is no need for consent from the debtor, but the previous creditor only has the obligation to inform the debtor of the transfer. If the cession is done during the litigation, a new creditor may step into the position of the plaintiff instead of the previous creditor with all the rights of the previous creditor. The defendant must give his consent for the change of plaintiff in the ongoing proceedings if he has already engaged in the discussion on the merits. After the litigation in which a court verdict was rendered, it can also be transferred onto the new creditor as the sale of receivables. There is no need for consent of the debtor, but the previous creditor has the obligation to inform the debtor of the transfer.

**Contact details:**

*ŠunjkaLaw*

*Advokat Tomislav Šunjka*

*Sremka 4/1, 21000 Novi Sad*

*Republic of Serbia*

[tomislav.sunjka@sunjkalawoffice.com](mailto:tomislav.sunjka@sunjkalawoffice.com)

*+38163542528*