

Special Information Briefing COVID-19 (No. 5):
Legal Proceedings during the State of Alarm

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Royal Decree No. 463/2020, of 14 March, declaring the state of alarm for the management of the health crisis caused by COVID-19, provides for the suspension of procedural time limits, with some exceptions, as well as the limitation and prescription periods of any rights and actions, while this situation is ongoing.

As a result, the General Council of the Judiciary (“CGPJ”), the Public Prosecutor’s Office and the Ministry of Justice, together with other public bodies responsible for the administration of justice, have adopted a series of measures, which are summarized below.

GENERAL RULES APPLICABLE TO ORDINARY COURTS

The general rules are applicable to all legal proceedings, except those which cannot be postponed (the details of which are provided in the following section):

- Hearings and other legal proceedings are suspended (with several exceptions), affecting both those already scheduled for hearing, which will not be held, and new proceedings, which will not be listed for hearing. Similarly, the procedural time limits relating to these proceedings are suspended.
- Calculation of all procedural time limits is interrupted.
- The regulation provides that the suspension of procedural time limits also extends to the time limits established for the performance of legal obligations with procedural implications and, in particular, it extends to the time limits governing the requests for entering into a voluntary arrangement with creditors. Until two months have elapsed following the conclusion of the state of alarm, any applications for a declaration of bankruptcy submitted during the state of alarm (or during the two-month period following its conclusion) will not be considered by the courts. The suspension of procedural time limits also extends to those debtors who, prior to the state of alarm, had made the notification provided for in Article 5 *bis* of the Spanish Bankruptcy Act (notification of negotiations with creditors to reach a refinancing or payment agreement or to obtain approval for a proposal of arrangement with creditors).
- Filing of written submissions by electronic means (LexNET) will be limited to those documents that have as their sole and exclusive object procedural actions declared urgent (i.e. that cannot be postponed) by the resolution of the CGPJ
- Filing of written submissions in person will not be permitted “*under any circumstances*”.

EXCEPTIONS

A number of exceptions to the suspension of the judicial proceedings have been provided for, and so the following legal proceedings will continue:

- For all jurisdictions:
 - (i) any proceedings that, if not carried out, could cause irreparable harm;
 - (ii) proceedings in which a violation of fundamental rights is alleged and which are urgent and prioritised, i.e. those in which postponement would render effective legal protection impossible or unduly difficult.
- In the area of civil law:
 - (i) non-voluntary detention by reason of mental disorder (Article 763 of the Civil Procedural Act);
 - (ii) preventative measures or other judicial proceedings which cannot be postponed (measures for the protection of children under Article 158 of the Civil Code are expressly mentioned as an example).
- The Civil Registry will provide continuing support during court hours. In particular, it shall ensure that burial permits are issued, that births are registered within the peremptory period and that marriages are registered.
- In the area of criminal law:
 - (i) on-call judicial service on prevention and protection of violence against women;
 - (ii) proceedings that cannot be postponed, such as urgent preventative measures, on site examination of dead bodies, or warrants conferring powers of entry, search and seizure;
 - (iii) any proceedings affecting arrested or imprisoned persons;
 - (iv) urgent proceedings on prison supervision.
- In the contentious-administrative jurisdiction:
 - (i) processing of judicial authorizations or ratifications provided for in Article 8.6 of Law 29/1998, of 13 July, governing the Contentious-Administrative Jurisdiction and, in particular, the judicial authorization or ratification of the decisions that the health authorities deem urgent and necessary for public health. These decisions

may involve the deprivation or restriction of personal freedom or any other fundamental right, as well as search warrants to enter homes and other premises that require judicial authorization.

- (ii) the procedure for the protection of the fundamental rights of the person provided for in articles 114 and relevant subsequent articles of the Law governing the Contentious-Administrative Jurisdiction;
 - (iii) urgent preventative measures; and
 - (iv) electoral appeals.
- In the area of employment law, proceedings and appeals which cannot be postponed and that arise from the application of the state of alarm in the following matters:
 - (i) class actions;
 - (ii) protection of fundamental rights;
 - (iii) collective redundancies;
 - (iv) temporary redundancies;
 - (v) urgent and prioritised preventative measures; and
 - (vi) enforcement proceedings related to the above proceedings.

CONSTITUTIONAL COURT

The Constitutional Court (“TC”), sitting in plenary session, has established the following criteria in a resolution of 16 March 2020:

- Suspension of the time limits governing all legal and administrative proceedings before the TC.
- Appeals and other written pleadings affecting constitutional or administrative proceedings may continue to be submitted via electronic Registry accessible on the website of the TC: www.tribunalconstitucional.es.
- Under Article 1(4) of Organic Act No. 4/1981 of 1 June on the states of alarm, emergency and siege (martial law), the declaration of the state of alarm does not interrupt the operation of the TC. Therefore, it will continue to issue whatever resolutions and preventative measures may be necessary in all constitutional proceedings, in order to safeguard the constitutional system and the protection of fundamental rights.

COURT OF JUSTICE OF THE EUROPEAN UNION AND GENERAL COURT OF THE EUROPEAN UNION

Court of Justice of the European Union

The Court of Justice of the European Union ("CJEU") has adopted a new regime concerning its judicial activity with effect from 19 March 2020¹.

The following new measures have been taken:

- Judicial activity continues, but priority is of course given to those cases that are particularly urgent (urgent proceedings, expedited proceedings and interim proceedings).
- Procedural time limits for instituting proceedings and lodging appeals continue to run and parties are required to comply with those time limits, without prejudice to the possible application of the second paragraph of Article 45 of the Protocol on the Statute of the Court of Justice of the European Union.
- The time limits prescribed in ongoing proceedings – with the exception of the abovementioned proceedings that are particularly urgent – are extended by one month with effect from today. Those time limits shall expire at the end of the day which, in the following month, has the same date as the day on which the time limit should have expired or, if that day does not exist in the following month, at the end of the day of the last day of that month.
- Until further notice, the time limits that are to be fixed by the registry, with effect from today, shall also be increased by one month.
- Hearings that are listed between now and 3 April 2020 are adjourned until a later date.
- Once it has resumed its judicial activities as normal, the Court will, if necessary, contact the representatives of the parties to inform them of the next stages of the proceedings.

General Court of the European Union

Due to a major crisis, the General Court of the European Union was initially obliged to reduce its judicial activities substantially. The hearings listed until 3 April 2020 were adjourned and only those cases that are particularly urgent (expedited proceedings, proceedings receiving priority treatment and interim proceedings) were dealt with.

¹ https://curia.europa.eu/jcms/jcms/P_97552/en/

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The General Court has now changed its working arrangements and is endeavouring, as far as possible, to continue dealing with other cases also. Priority shall continue to be given to cases that are particularly urgent.

With regard to procedural deadlines, the following rules apply:

- Time limits, including time limits for instituting proceedings, shall continue to run and the parties are required to comply with those time limits, without prejudice to the possibility of invoking the second paragraph of Article 45 of the Protocol on the Statute of the Court of Justice.
- In order to take into account the legitimate difficulties that the parties are currently facing, the time limits that will be fixed by the registry, with effect from today, shall be adapted to the context of the unprecedented health crisis that we are currently experiencing.

We are aware of the existing uncertainty as a result of the measures that may be adopted by the Spanish Government and other authorities in the coming days as a result of the evolution of the COVID-19 crisis. However, in light of the resolution of the CGPJ, it is possible to anticipate that all judicial activity will be reduced significantly, if not suspended entirely. Notwithstanding the above, until this situation is resolved, in Pérez-Llorca we will continue to work to maintain business as usual and to protect the interests entrusted to us.

The information contained in this Information Note is of a general nature and does not constitute legal advice. This document was prepared on 20 March 2020 and Pérez-Llorca does not assume any commitment to update or review its contents.