



STATE OF ALARM DUE TO COVID-19: HOW DOES IT AFFECT TO CIVIL JUDICIAL PROCEEDINGS?

23th March 2020

By virtue of Royal Decree 463/2020, of 14th March, which declares the state of alarm for the management of the health crisis caused by COVID-19 (hereinafter, the "Royal Decree"), the state of alarm has been declared throughout the national territory for an initial period of fifteen days, which may be extended, in order to protect the health and safety of citizens, contain the progression of the disease and strengthen the public health system. This Royal Decree was published in the BOE and came into force on 14th March 2020.

The state of alarm entails a situation of constitutional exception, which will undoubtedly have an enormous impact on the socio-economic life of the country and, in particular, on commercial and contractual relations of companies and individuals.

Among the numerous measures adopted in recent days, among many others, there are those that affect the functioning of Spanish judicial activity.

Due to the progressive and uneven spread of the disease within the country, the implementation of measures by

the competent authorities has not been uniform throughout the national territory. These measures have been ratified and will continue to be in force as far as they are compatible with the provisions of the Royal Decree (First Final Provision), and therefore local particularities must also be taken into account when analysing the different scenarios that may arise.

From the Litigation and Arbitration Department of ONTIER, we want to help our clients to clarify any doubts raised by the current scenario.

To this end, in this review, we will focus on how judicial activity in the civil jurisdiction has been affected by COVID-19.

There are three main blocks of measures to be taken into account with regard to civil judicial proceedings, either ongoing or planned to be initiated in the near future.

- **Stay of procedural deadlines**

The Second Additional Provision of the Royal Decree, in its Section 1, has established, in general, the stay and

interruption of the terms provided in procedural laws for all jurisdictional orders. The calculation of those terms will be resumed at the moment that the Royal Decree or, if applicable, any of its extensions, are no longer in force.

Such interruption shall not apply to cases of (i) judicial authorization for non-voluntary internment due to psychological disturbance provided in Article 763 of the Civil Procedure Act and (ii) adoption of measures or provisions for the protection of minors provided in Article 158 of the Civil Code (2nd A.D. of the Royal Decree, section 3, subsections c) and d)).

Notwithstanding the above, the judge or the court may agree to take any legal action that may be necessary to avoid irreparable damage to the rights and legitimate interests of the parties in the process (2nd A.D. of the Royal Decree, section 4).

In light of the measures contained in the aforementioned Royal Decree, on March 14th, 2020 the Permanent Commission of the General Council of the Judiciary (CGPJ) agreed the stay of procedural terms throughout the national territory.

It should be noted that on March 13th, 2020, the GPCJ had already agreed to suspend procedural deadlines in the Basque Country, in the Autonomous Community of Madrid and in the judicial districts of Haro (La Rioja) and Igualada (Barcelona), in accordance with the recommendations of the health authorities in those territories.

In order to clarify the doubts of interpretation that have arisen in practice, on March 18th, 2020, the GPCJ agreed that, while the state of alarm is maintained, the submission of procedural documents in person will not be appropriate "in any case", limiting the telematic form (LexNET or equivalent systems) to those briefs which are sole and exclusively related to procedural actions which have been declared urgent and undelayable by the instructions and agreements of the judges' governing body.

In addition, it was agreed to extend the suspension of the procedural deadlines provided in the Royal Decree, in general, to those deadlines established for the fulfilment of legal obligations with procedural projection and, in particular, to those governing the submission of applications in case of insolvency, in accordance with the provisions of Article 43.1 of Royal Decree Law 8/2020, of March 17th, on urgent and extraordinary measures to deal with the economic and social impact of the COVID-19.

- **Stay of scheduled judicial proceedings**

On March 14th, 2020, the Permanent Commission of the CGPJ also agreed the stay of scheduled judicial proceedings throughout the national territory, while the state of alarm lasts.

In order to maintain the essential services of the Administration of Justice, as far as the civil judicial order is concerned, the following actions are guaranteed:

- Any legal action which, if not practised, could cause irreparable damage.
- Urgent internments of article 763 of the Code of Civil Procedure.
- The adoption of precautionary measures or other actions that cannot be postponed, such as the measures for the protection of minors in article 158 of the Spanish Civil Code.
- The courts of violence against women will provide the appropriate on-call services. In particular, they shall ensure that protection orders are issued and any precautionary measures taken with regard to violence against women and minors.
- In general, the proceedings in which a violation of fundamental rights is alleged and which are urgent and preferential (in other words, those where postponement would impede or make very burdensome the judicial protection claimed).

The previous measures had already been adopted by CGPJ the day before for the Basque Country, the Autonomous Community of Madrid and the judicial districts of Haro (La Rioja) and Igualada (Barcelona).

- **Suspension of statute of limitations periods**

The Fourth Additional Provision of the Royal Decree states that the statute of limitations periods (both "*prescripción*" and "*caducidad*") of any actions and rights will be suspended during the period of the state of alarm and, if applicable, any extensions adopted.

In light of the measures described above, it can be concluded that:

- a) With regard to ongoing proceedings, in general and with the above-mentioned exceptions, it has been agreed the stay of procedural deadlines and scheduled hearings (e.g. preliminary hearings or trials) during the state of alarm.
- b) Besides the special procedures (art. 763 LEC and 158 CC), during the state of alarm, the adoption of interim measures and any judicial action that, if not taken, could cause irreparable damage will be processed. Therefore, we understand that the situation of the state of alarm does not impede the presentation of new cases that involve a request for interim measures, which must be processed.
- c) For the purposes of calculating the statute of limitations of actions and rights, the period of time during which the State of alarm is in effect, shall not be taken into account.
- d) Regardless of the temporary particularities indicated for the territories of the Basque Country, the Community of Madrid and the judicial districts of Haro (La Rioja) and Igualada (Barcelona); it would be necessary to verify in each case the existence of specific

agreements that might have been adopted in other judicial districts or the specific judicial resolutions that might have been issued by each court prior to the entry into force of the Royal Decree and the extraordinary agreement of the GPCJ of 14 March 2020, in which case they will also have to be taken into consideration.



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