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INTERNATIONAL LAW FIRM

SINCE 1990



**Staying of procedural terms
on court cases pursuant to
the State of Emergency
Measures and Actions Act**

1. Staying of terms

According to the final text of Art. 3 of the State of Emergency Measures and Actions Act, the latter declared by a decision of the National Assembly on March 13, 2020, for the period from March 13, 2020 until the final annulment of the state of emergency, **all procedural time limits on judicial, arbitration and enforcement proceedings shall stop, with the exception of terms in criminal proceedings, those under the Extradition Act and the European Arrest Warrant, and those in proceedings relating to coercive measures.**

On this basis, the terms for appeals against judicial acts in the proceedings are also stayed. The rule applies both to time limits having commenced before 13.03.2020 and to terms in proceedings commencing after that date. If the term has commenced before 13 March 2020 and has not

expired by that date, the respective right may be exercised within the remaining days of the term after the end of the state of emergency has been announced.

The case-law contains two different opinions on the effect of staying a term that has started-up but has not yet expired. In the case at hand, the first opinion should be applied, namely, by analogy the provisions of Art. 61 of the Code of Civil Procedure and Art. 116 of the Obligations and Contracts Act, and not the one under Art. 63 (2) of the Code of Civil Procedure and Art. 117 (1) of the Obligations and Contracts Act, according to which a completely new term starts to run as of the annulment. The State of Emergency Measures and Actions Act does not provide that the stayed terms are to start to run again, and the legislator did not mean that a new time period should begin



to run anew. **Therefore, the general principle of the effect of the staying of terms should be applied, and the resumed period may be limited to one to two days only, since only the remainder of the period begins to run once the end of the state of emergency has been officially declared.**

The State of Emergency Measures and Actions Act does not introduce a prohibition on filing applications for the exercise of rights in various proceedings during the period of emergency. Such a case would be a case of exercising of rights after the beginning of the respective statutory term, which is not procedurally inadmissible and should be upheld. By filing an additional petition with the court, the party may even request an extension of the term, indicating the circumstances of emergency and the COVID-19 epidemic as grounds thereof. **In the context of overloaded courts due to operations being**

halted in the state of emergency, it is likely that judges will grant the requests for extensions. Therefore, we believe that, as a matter of necessity, the parties are entitled to obtain an additional extension of the terms in judicial procedures even after the annulment of the state of emergency.

Extraordinary measures for operation of the courts

Even before the State of Emergency Measures and Actions Act was passed, the Supreme Judicial Council instructed the administrative heads of the courts to restrict access to buildings and / or to introduce measures to limit the spread of the epidemic. The measures were adopted by decisions of the Judges Panel to the Supreme Judicial Council under Minutes No. 9 / 15.03.2020, Minutes No. 10 / 16.03.2020, and were extended at the extraordinary working session on 26.03.2020.



In order to safeguard the lives and health of citizens, the Supreme Judicial Council decided that all criminal, civil and commercial, as well as administrative cases, are suspended during the state of emergency, with the exception of certain urgent procedures explicitly mentioned in the decision (i.e. cases regarding measures for detention in pre-trial criminal proceedings, protective interim measures, questioning of witnesses and defendants, cases instituted under requests under the Special Intelligence Measures Act and Article 159a of the Criminal Procedure Code, etc; cases regarding parental rights only as far as interim measures are concerned, permits for withdrawal of child deposits, cases regarding the securing of future and/or pending claims; cases under Article

60 (on appeals against allowed preliminary execution) and Article 166 (on requests for suspension of execution) of the Administrative Procedural Code, cases regarding the securing of evidence, the cases under Article 75 and Article 157 of the Tax Insurance Procedural Code, etc.).

The rest of all pending cases were postponed for certain dates, without summons being served on the parties involved, as they were notified made by phone and email. The rescheduled sessions fall after the final day of the declared state of emergency, but before the judicial holiday for the current year, which begins on July 15. Due to the expected extension of the period of emergency, the Judges Panel should decide further on the possible additional postponement of the hearing of pending court cases.



As additional measures, the Council decided that courts shall not institute cases on the documents filed for initiating court proceedings, except for the proceedings explicitly stated above.

All documents must be submitted either by ordinary mail or electronic means. Referring to the electronic system of the Sofia City Court, for example, our team found that the Council's measures were complied with, and that between 17.03.2020 and 30.03.2020 only two commercial cases were opened. However, there is no obstacle for the parties to file documents in order to obtain an entry registration number by the court. Any documents filed should be administered by means of opening of a court case immediately after the state of emergency has been annulled and / or after a new resolution of the Supreme Judicial Council, insofar as it is a measure that does not derive from any law.

Inquiries on court cases are only allowed on the phones

announced on the websites of the courts or electronically at their email addresses.

At its extraordinary meeting on 31.03.2020, the Judges Panel of the Supreme Judicial Council held a further discussion on the organization of work of the judiciary.

Due to the need to restrict access to court buildings in order to protect the lives and health of citizens, the members of the Panel decided that the scope of court cases referred to in Minutes No. 9 / 15.03.2020, Minutes No. 10/16.03.2020 and the extraordinary working session of 26.03.2020 should not be extended, **except for the cases related to protection against unjustified actions and omissions of the administration, in accordance with Chapter 15 of the Administrative Procedural Code (fast proceedings that should be immediately examined by an administrative judge from the court at the place of action/omission).**



The Judges Panel reversed its decision under item 9 of Minutes No. 9 / 15.03.2020, according to which extracts from the judicial records were issued only by electronic means, and the administrative heads of the courts shall arrange the courts to issue extracts from the judicial records pursuant to the 'one stop shop' principle.

Options for introducing additional e-justice measures on judicial procedures

As a result of the resolutions adopted by the Supreme Judicial Council, all courts restricted the access to their buildings and all inquiries on court cases; even inquiries on urgent proceedings (e.g. detention in pre-trial criminal proceedings, interim protective measures, etc.) were restricted to some extent. The Sofia City Court, for example, urged citizens not to go to the court, clearly indicated that cases would not be heard, inquiries would not be carried out and documents on hand would not be accepted.

All parties were urged to submit documents by post and electronic means. **The court, however, indicated that cases related to supervision measures would be heard via Skype without the detained being taken to court.** Only parties in the judicial procedures specified in the resolutions of the Supreme Judicial Council will be allowed in the building. With regards to the need of improvement of the operations of the courts, in recent days letters, proposals and signals have been received by the Supreme Judicial Council from the Supreme Bar Council; attorneys at the Sofia Bar Association; the Chairman of the Sofia Bar Association; the administrative head of the Administrative Court in Burgas; CEZ Electro Bulgaria, Bulgarian Helsinki Committee and various other entities.



The documents submitted present arguments for the necessity to change the rules of procedure of the courts introduced earlier by the Judges Pnael as they further complicate the work of the parties concerned and their lawyers.

In the scenario of the state of emergency being extended after 13 April, we believe that careful consideration should be given to introducing more effective use of legislative amendments in order to allow for the hearing of cases via an electronic video connection or a telephone connection. In such a case, the principles of competition, publicity and immediacy may not be infringed because technical means allow that they be complied with (e.g. *live broadcasting of sessions via a link on the court's website*), and also **because an electronic video connection would allow the parties involved to ask questions**

and receive real-time answers that guarantee them that they will be heard (*principle of audi alteram partem*), and would allow them to react in defense of their rights immediately, of course, under the direct supervision of the court. A similar approach has already been adopted in some foreign legal systems.

A possible measure to further improve the operational capacity of the courts would be the more efficient use of the Single E-Justice Portal, which is not yet fully operational within all Bulgarian courts, as well as electronic exchange of case-files, with e-mail addresses submitted by the parties concerned to the courts.

On 18.03.2020 HM Courts&Tribunals Service adopted Guidance on how HMCTS will use telephone and video technology during the coronavirus (COVID-19) outbreak.



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With respect to other current topics, in relation to the legislation, stipulating the relationships at the state of emergency, you may find information on our website – www.penkov-markov.eu . Of course, you may address us for any additional information and assistance at lawyers@penkov-markov.eu.

The above provides general information related to the adoption of the Emergency Measures and Actions during the State of Emergency Act and it is not exhaustive, whereas it serves only as a guide for interpreting the news as of April 1, 2020.

