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Recent changes in emergency legislation

Part I

Less than 20 days after the adoption of the Emergency Measures and Actions during the State of Emergency Act (*the Act*), some of its vague texts had to be corrected and some of its provisions – amended, due to the fact that they have proven unacceptable to society and business. It seemed that the voice of the innovative part of our society had been partially heard, and certain legal provisions, aimed progressively at adapting the law enforcement to the evolving digitalization of a number of public processes, were adopted for the first time.

1. Repeal of the judicial vacation and holding of distance meetings

Taking into account that, for the sake of prevention from the spread of Covid-19, society was encouraged to work from home (home office), and instead of physically holding meetings, the business began to make radical use of any type and format of video conferencing, such opportunity was legally foreseen for public authorities and the court.

After the publication of the Act, **meetings of state and local bodies, councils, committees, commissions, etc. are allowed to be held at a distance.** This is a very sensible amendment as the meetings will be held in accordance with the legal requirements for quorum and personal vote without violating the rights of interested parties.

For the time being, until suspension of the state of emergency, **open court hearings, including sessions of the Commission for Protection of Competition, may also be held remotely.** Besides from that, parties and other participants shall be provided with direct and virtual participation in the meetings.

All e-government supporters are hoping that this long-awaited step in the right direction will show even to the biggest critics of digitalization its obvious benefits, even when it comes to the traditionally conservative systems of the court and the administrative authorities with jurisdictional functions, and will be sufficient justification for a change in the Bulgarian



legislation in this direction after the lifting of the state of emergency.

Apropos, we could refer to this legal text as one of the few beneficial and constructive things that has happened so far as a consequence of this crisis situation.

2. Suspension of terms

The first version of the Act provided for the suspension of a number of terms in an absolute manner, which, in turn, would inevitably lead to blocking the judicial and administrative activities. At the same time, as pointed out in paragraph 1 above, there are also adequate ways for processing cases and administrative procedures without the risk to the health of those involved in the process and without negatively affecting the constitutionally guaranteed rights of the citizens, including the right to timely justice. The amendments in the Act apparently aim to precisely review the initial approach and due to this, the following corrections were adopted:

Regarding the procedural terms:

The principle laid down in the initial version of the Act remains, namely that during the state of emergency procedural terms shall be stayed for the parties. The amendments to the Act are aimed at introducing exceptions to this principle. For this purpose, **an Appendix to the Act (to Art. 3, Item 1) was adopted, listing in detail the proceedings for which the procedural terms shall not be suspended during the state of emergency even for the parties.** Among the said terms 21 criminal proceedings are included, as well as 7 civil and commercial proceedings, and 16 administrative cases.

Obviously, the main purpose of this amendment is to avoid the delay in the administration of justice, unless it is necessary due to the objective impossibility of the parties. It is logical and fair to postpone the proceedings and suspend the procedural terms only when the parties concerned are unable to participate and defend their respective rights, and not in general. The opposite would lead to the possibility for abuse of rights and consequently damage the rights of the other



party, which is, by all means, not fair.

Regarding the limitation periods:

The law explicitly provides that the limitation periods, the expiration of which leads to loss **or acquisition** of rights of individuals, shall be suspended. Logically, in a situation of limited free movement between populated areas, limited access to the financial system and an economic environment which makes difficult the performance of any monetary obligation, limitation periods should be suspended in order to allow bona fide individuals to exercise their legal rights as soon as the situation passes.

Once again, presumably in order to avoid blocking the administrative process, the initially introduced provision providing for the suspension of **the terms for fulfillment of the instructions,** given by an administrative authority to parties or participants in proceedings (except for proceedings under the European Structural and Investment Funds Management Act), was **repealed**.

We particularly underline that the terms, the suspension of which has been repealed pursuant to the latest amendments, shall be resumed as of the expiration of a 7-day term from the publication of the Act. This provision aims to provide certain predictability for citizens and state authorities in this dynamic law-making environment where, otherwise, everyone shall have to adapt in an immediate manner.

Another legislative framework, subject to wide discussions before the spread of the virus, was the one regulating the field of measures against money laundering. A type of vacation was envisaged in the said field, whereas, pursuant to the newly adopted Art. 24, all **terms** for obliged entities to prepare their internal rules under the **Measures Against Money Laundering Act**, respectively to align them with the relevant legal requirements, shall be **suspended**. While in the other provisions aimed at liberalization of the applicable regime there is a specific logic related to the supply chain disturbances, the limitations in free movement of citizens, as well as the limited access to financial resources,



this specific amendment is somehow without reasonable justification. Logic seems to rather support the concept that in the current period the business is able to direct all of its potential to a better internal organization of its activities and to correction of its internal processes. In this relation, it is necessary to prepare any missing internal rules and procedures accordingly, which, otherwise, in the fast-paced everyday life, may have been neglected compared to other urgent ongoing tasks, which now may not be so dynamic, considering the shrinking commercial turnover.

3. Exceptions from the extension of terms

The previous version of the provisions of the Act did not provide for the explicit suspension of public procurement procedures. However, by the extension of a number of terms with 'one month as of the termination of the emergency state', the path for their further development was practically blocked.

In times of a rising economic crisis, the public procurement is a possible mechanism for

financing from the state. Logically, after finding a solution for timely realization of the administrative activities related to public procurement, namely in a distanced manner, which also does not pose any risk for further spreading of the pandemic, the limitations for their normal development were repealed. For the said purposes, the extension with one month as of the termination of the emergency state of **terms in procedures related to public procurement, concession procedures, proceeding under the Protection of Competition Act**, as well as terms in some other proceeding explicitly listed in the newly adopted Para. 2 of Art. 4 of the Act, was repealed. Due to the specifics of the relevant legislation regulating public procurement, concessions etc., it is explicitly provided that this rule shall also apply in cases when the procedures are initiated pursuant to a regulation adopted by the government in accordance with the applicable laws.

The above amendment shall enter into force as of the expiration of a 7-day term from the publication of the Act.



For more current topics related to the emergency legislation stipulating legal relations during the state of emergency, you can find information on our website:

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Of course, you can reach us for additional information and assistance at: lawyers@penkov-markov.eu.

The above provides general information related to the adoption of the 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 8th, 2020.

The team of Penkov, Markov & Partners.

