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What does the Covid-19 crisis mean for victims of fraud?

Country: AUSTRIA

1. 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?

Since freedom of movement has been restricted, parliament has passed various laws regarding the effects of Covid-19 on the justice system. The first round of these laws was passed in mid-March, shortly after the big lockdown. They regulated, among other things deadlines, oral hearings and economic difficulties affected by the crisis. Numerous measures (particularly the postponement of oral hearings and the interruption of deadlines) were put in force until 30 April and have subsequently been relaxed.

Oral hearings

Oral hearings that would have taken place before 30 April were postponed if they were not demonstrably necessary to avert danger to life and physical integrity, or to prevent irreparable harm. Since 1 May, all oral hearings have been allowed to take place again.

Using video conferences in the oral hearing has been possible in the past – not for the whole hearing, but for the examination of witnesses and parties. Judges have, however, rarely used it.

At the end of April, the Austrian Parliament adopted new regulations regarding **oral hearings conducted via video conference**. Accordingly, civil court hearings, including the taking of evidence, can be held as video conferences by court order, if the parties agree. Video hearings will – according to the explanatory remarks of the legislation – be called at the courtroom, and the courtroom will be accessible to the public; provided the viewers comply with the security rules (physical spacing rules, masks, etc). It is not planned to make the video conference available online to the public. Parties, witnesses and other participants (experts, interpreters) may request a video conference if they belong to a risk group or are in necessary (professional or private) contact with someone from a risk group.

We advise counsel to check with the court before the hearing takes place, regarding how their judges solve the **open questions** of a legal and technical nature regarding the concrete implementation of video hearings, such as:

- Is the judge physically in the same room as the witness and are the party representatives on video?
- Are the judge and party representatives physically sitting in the same room and is the witness being connected?
- Are all parties connected exclusively by video?
- How is the danger of influencing witnesses to be dealt with (e.g. that the witness is observed, threatened etc. during his testimony without the judge being aware of it)?
- How can the lawyer and his/her client communicate if they don't sit next to each other during the hearing?

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A pragmatic problem is that the justice system sometimes lacks certain, useful, technical means. For example, not every judge possesses the technical equipment (PC with camera, headset) that would be optimal for video conferencing

Deadlines

All **procedural deadlines** which had not expired as of 22 March 2020 or which would have begun to run after 22 March 2020 were suspended until 30 April 2020 and started to run again on 1 May 2020. Exceptions were possible in specific cases if that was urgently necessary to avert danger to life and physical integrity or to prevent irreparable harm and in proceedings under the Epidemic Law.

Periods of limitation or prescription for bringing actions before the courts were suspended. The period from 22 March 2020 to the end of 30 April 2020 were not included in the period during which an action, application or statement had to be brought before a court. The remaining period of limitation started to run again on 1 May 2020.

Request for **interim injunctions and freeze orders** have been considered urgent proceedings which were always handled as usual and were neither subject to the interruptions of deadlines, nor to the postponements of hearings.

Economic Difficulties

A special protection was adopted for **tenants of residential property** whose economic capacity has been considerably impaired by the Covid-19 crisis and who came therefore in default with rental payments that would be due in the period from 1 April 2020 to 30 June 2020. In such circumstances, the landlord cannot terminate the tenant's lease because of the arrears and cannot claim the arrears in court until the end of 31 December 2020.

Relief is available for consumers and “**microentrepreneurs**” (enterprises which employ fewer than 10 persons and whose annual turnover or annual balance sheet total does not exceed EUR 2 million) who are in arrears with the repayment of a loan agreement concluded before 15 March 2020 due to the Covid-19 crisis.

There is also a special Covid-19 fund, for companies who suffer from a significant decrease of their revenues due to the Covid-19 crises. This is not linked to specific industries but, rather, to an associated loss in revenues.

If somebody is affected by Covid-19 and, as a result, is in economic difficulties which would lead to the **initiation of an enforcement proceeding** and this enforcement would imperil his economic existence, the enforcement can be postponed at the request of the affected debtor. In order to prevent people in the current situation from becoming homeless due to eviction, it is possible to postpone the eviction of dwellings. For other types of enforcement, the Covid-19 crisis, alone, is not a reason for postponement.

The obligation of a debtor to file an **insolvency petition** in the event of over-indebtedness is not mandatory by way of exception in the event of over-indebtedness occurring in the period from 1 March 2020 to 30 June 2020. If there is over-indebtedness at the end of this period, an insolvency petition must be filed within 60 days of 30 June 2020 or within 120 days of the occurrence of over-indebtedness, whichever period ends later.

If a contracting party whose economic performance is significantly affected by the Covid-19 crisis **defaults on payment obligations** that become due in the period from 1 April 2020 to 30 June 2020, such party will not be required to pay compensation for out-of-court collection measures that were carried out before 1 July 2020. In addition, interest on arrears up to this date is limited to 4 percent per annum. This regulation applies to payment obligations arising from all contracts concluded before 1 April 2020, both for business-consumer transactions and for other legal transactions.

Work of courts, lawyers and banks

Courts continued to work, even while the strictest restrictions were in force – but with reduced staff. Judges have generally worked from home since the lockdown but are now partially returning to the court (particularly for the hearings). They can and could always be contacted by telephone or e-mail. Public service in the court has been reduced to the extent necessary to safeguard procedural and party rights. For personal appearance without summons, an appointment by telephone is necessary. Submissions to the court must be submitted either directly to the court or the electronic court system. In urgent cases, it is also possible to make an appointment by telephone to make a submission orally.

In general, documents are served (also abroad) – albeit under special security regulations.

Lawyers were continually allowed to work, however, most have done so in the form of the home office. Since May, lawyers have been partly returning to the office – in accordance with a recommendation of the government for office work. Most clients' meetings nevertheless are still taking place through video conferences.

Banks have remained open and working as usual – of course under security regulations (1m spacing etc.)

2. 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?

2.1. Short/medium term perspective**Court hearings**

- Currently, it appears that most judges conduct physical – not video – hearings, especially when only a few people are involved. The general safety regulations apply to physical court hearings:
 - Masks and distance rules throughout the court building.
 - In the hearing room, the rules of spacing also apply and the requirement of using masks is determined by each judge him/herself.
 - Temperature measurement at the entrance

Court hearings by video conference are only conducted with the consent of all parties. So far we have received a number of such invitations to video court hearings. However, it seems to have become standard that one of the parties opposes a video hearing. In such case, the court is forced to revert to a physical hearing. One judge has agreed to a foreign party representative's participation in the court hearing via video conference.

We expect that, in the future, judges might be less reluctant to use video conferences as a tool – if not for the whole hearing at least for the examination of witnesses and parties. We believe that, in particular, if foreign parties or witnesses would be required to travel by air, this tool will become more popular, at least as long as air travel continues to be restricted.

Measures in response to the economic impact

There are measures, adopted in response to the economic impact of the Covid-19 crisis, which are not limited to the period of strict restrictions on freedom of movement. These measures include various forms of relief under insolvency law, deferrals for borrowers and tenants and the reduction of interest for default. Most of these measures will remain in force at least until 30 June; landlords cannot claim arrearages for March – June 2020 in court until after 31 December 2020.

Impact on crimes

We have witnessed a significant increase of cyber crimes, in part as simple as shipping sand instead of the ordered goods. Cybercrime attacks (data and equipment theft and banking fraud) are likely to increase, as working from home is still very popular and many offices are left empty and home offices are often less well-protected. We have observed fraudulent acts being committed in connection with medical goods and protection gear during the crisis. Deliveries are not made, the quality is not as promised, etc.

2.2. Long term perspective:

The opportunity for corruption is strongly enhanced with the reduced rule of law and related controls in place. This will likely create significant work for white-collar crime lawyers in the future.

We fear that the Covid-19 crisis will have a severe, continuing, negative economic impact on the global and Austrian economies. We foresee a shortage of resources in all publicly-funded sectors, including the judicial system. The focus for the distribution of scarce state funds might be applied less on prosecuting fraud and corruption, but rather, on other areas perceived to be of more urgent public attention.

On the positive end, we expect this crisis to lead to better cross-border cooperation. The crisis has helped connecting people who are not in the same office. We learned that physical distance can be overcome with the help of online communication. This faster and cheaper way of cooperation will hopefully enhance cooperation of prosecution authorities and co-counsel across the globe.

Moreover, the cooperation with third-party funders should be eased and will likely rise.

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