

**MEMORANDUM**

From: FraudNet-Members

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**Country: Republic of Serbia**

 **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?**

Is there special legislation on the effects of the crisis on civil justice?

The Government of Republic of Serbia issued a decree on deadlines in court proceedings for the duration of state of emergency enacted on March 15<sup>th</sup>, 2020, and which decree is in effect beginning from March 20<sup>th</sup>, 2020.

On March 17<sup>th</sup>, 2020 Ministry of Justice issued a Recommendation on the regime of work of courts and public prosecutors offices during the state of emergency that was enacted in Republic of Serbia on March 15<sup>th</sup>, 2020.

On March 18<sup>th</sup>, 2020 the High Judicial Council delivered a conclusion by which it concertized which court proceedings are considered as the ones that cannot be delayed during the state of emergency.

On the basis of the aforementioned Recommendation of the Ministry of Justice and the conclusion of the High Judicial Council, the chairman of every court issued instructions by which they regulated the regime of work of the court. Most of the rules are the same for all courts, but there are some differences. The following rules are the same:

- proceedings that can and cannot be delayed are the same
- all courts must form a list of on duty judges, that will work in the court building, while the other judges work from home
- all courts receive briefs from parties in person only in proceedings that cannot be delayed
- all courts receive all of the briefs via mail
- all courts placed some sort of restrictions regarding parties entering the premises of the court

Rules that differ from court to court:

- time period in which parties are allowed to enter the premises of the court
- time period in which parties may submit briefs in person
- number of persons that can on the court premises at one time
- restricted time period in which the lawyers may pick up court mail
- rules regarding issuance of certificates
- number of reception counters that serve parties

On March 18<sup>th</sup>, 2020 the Chamber of public enforcement officers issued Instructions on the regime of work of public enforcement officers during the state of emergency enacted in Republic of Serbia on March 15<sup>th</sup>, 2020.

On March 17<sup>th</sup>, 2020 Ministry of Justice issued a Recommendation on the regime of work of Public notary offices during the state of emergency enacted on March 15<sup>th</sup>, 2020. Settlements before the

Public notary are being done, but only if the party is not in the category of persons under special protection. In these cases, the party must contact the Public notary office via telephone or e-mail to schedule the time and date. The Public notary office will schedule their activities in such a manner where there will be a gap of one hour between each scheduled party. Public notary deposits are not specifically regulated by the Recommendation of the Ministry of Justice, from which it stems that Public notary deposits are done as in ordinary conditions, but following the rules that were prescribed for settlements (prior scheduling, one hour between scheduled intervals, not a person under special protection etc.).

Does the crisis have an effect on court hearings?

Yes, the crisis has an effect on court hearings. On March 17<sup>th</sup>, 2020 the Ministry of Justice issued a Recommendation on the regime of work of courts and public prosecutors offices during the state of emergency that was enacted in Republic of Serbia on March 15<sup>th</sup>, 2020. This Recommendation was concertized by regulations of the High Judicial Council as well as the courts themselves via the aforementioned instructions.

All court hearings are postponed for the duration of the state of emergency, with the exception of court cases that cannot be delayed. Court cases that cannot be delayed are:

- cases in which the court must decide on interim measures (preliminary injunctions, freezing orders),
- cases in which the court must decide on measures of protection against domestic violence,
- cases in which the court must decide on retention in a health institution which performs activities in the area of neuropsychiatry,
- enforcement proceedings based on an enforceable document regarding family relations.

Video conference hearings are not held in civil proceedings, only in specific criminal proceedings.

Does the crisis have an effect on deadlines (of procedural and substantive law)?

Yes, the crisis has an effect on deadlines. The Government issued a decree (which is in effect beginning from March 20<sup>th</sup>, 2020) which regulates court deadlines.

Deadlines for the initiation of court proceeding do not expire during the state of emergency. This includes the deadlines for:

- Filing a lawsuit in the litigation proceedings,
- Submission of a proposal for the initiation of non-litigation proceedings,
- Submission of a proposal for the initiation of enforcement proceedings and
- Submission of a constitutional appeal to the Constitutional court.

Also, deadlines for the submission of legal remedies, legal instruments and taking other legal actions in the aforementioned proceedings do not expire during the state of emergency.

Does the crisis have an effect on enforcement?

Yes, the crisis has an effect on enforcement. Courts are only issuing enforcement orders on the basis of enforceable documents that are related to family relations and are performing enforcement acts only in these procedures.

Public enforcement officers are not issuing enforcement orders and performing enforcement acts, especially if they are being collected by the following means: sale of real-estates and/or movable property of the debtor, collection of debt from salary or pension or other income, handing over real-estates and/or movable property to the creditor. However, public enforcement officers continue enforcement acts as usual in cases where receivables stem from legal maintenance, compensation for damages because of impairment of health, monetary annuities because of total or partial incapacity for work and monetary annuities for legal maintenance that was lost because of death of legal maintenance debtor, monetary compensation for disability insurance, receivables that stem from regulations on social security, temporary unemployment, financial support to families with children, receivables that stem from scholarships and help to pupils and students, enforcement proceedings that were initiated on the basis of interim measures and enforcement proceedings where the claim is being collected from bank accounts of legal persons.

In accordance with the aforementioned decree regarding deadlines, deadlines for submitting proposals for the initiation of enforcement proceedings do not expire during the enacted state of emergency. Also, none of the deadlines in the already initiated proceedings expire during the enacted state of emergency. Deadlines related to legal remedies do not expire during the enacted state of emergency.

How do courts work during the crisis?

Courts are not completely closed. They are working with minimal capacity with as little employees as needed to perform the most essential activities. Only the hearings in the proceedings that cannot be delayed are held. Therefore, most of the judges are working from home. All of the courts must form a list of on duty judges that will handle urgent matters if they arise, and only these judges are working from the court building.

All of the courts have placed some sort of restrictions regarding the number of parties that can be at the court premises at one time. However, there is a difference in the manner in which this rule is implemented. Some of the courts restrict the total number of parties that can be on the premises of the court and some of the courts restrict the number of parties based on the number of reception desks in the court. If there are more parties than the number of parties allowed on the premises of the court, they need to wait in front of the court building.

The courts accept briefs in person only for urgent matters (the cases that cannot be delayed), but the time period in which this is possible differs from court to court. However, all of the courts receive all the briefs via mail.

Courts can be contacted, and many of the courts have also opened more telephone numbers for information on cases. As most of the judges are working from home, judges can only be contacted if they are in the court building.

How are particularly urgent matters handled, in particular requests for interim measures such as injunctions and freeze orders?

In accordance with Article 14. of the Law on enforcement and securities courts may schedule a hearing before deciding on an interim measure. This means that courts can either schedule a hearing before deciding on an interim measure or decide on an interim measure without scheduling a hearing.

Given that these matters are considered proceedings that cannot be delayed, in accordance with the Recommendation of the Ministry of Justice, conclusion of the High Judicial Council as well as the instructions of the courts, courts act in these matters as they do in ordinary circumstances.

How do lawyers work during the crisis?

Most of the lawyers are working from home. Contacts with clients is done via telephone, e-mail, conference calls, Skype, Meet, Zoom and other means of communications that don't require physical contact.

They also work with clients in the office in cases where such meetings are deemed necessary, with respects for social distance rules.

How do banks work during the crisis?

In most cases banks have temporarily closed some of their branches. The working hours of banks is shortened and most of the banks have put restrictions regarding the number of clients that can be present on their premises at one time. Most of the banks recommend using e-banking for client`s needs, but cash disposal is allowed, too.

Does the crisis have an effect on insolvency law?

Yes. Hearings in insolvency cases are not taking place during the enacted state of emergency, as per the aforementioned Recommendation of Ministry of Justice. However, the competent authority has not yet delivered a regulation by which it is prohibited to initiate insolvency proceedings. Therefore, the propositions for initiation for insolvency proceedings can still be submitted.

Are there any further effects not addressed in the questions above?

Yes. Companies will be mostly financially crippled after the crisis, therefore when they find themselves in the capacity of the debtor, the collection process will be significantly impeded and maybe disabled entirely. On the other hand, the creditors will have less monetary assets to invest in court proceedings, debt collection and asset recovery proceedings.



#### **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?**

Which measures introduced during the crisis will be withdrawn immediately?

Court proceedings and enforcement proceedings will resume. All of the hearings that were not held during the state of emergency will be rescheduled for another date. This in turn will affect the length of proceedings, and the creditors will wait longer to receive an enforceable document – judgment. This will also lengthen the proceedings before the Appellate courts and the Supreme cassation court because of too much new cases entering the court at once. The correspondence of parties in the proceedings is accumulating at the courts, which will be sent all at once when the crisis ends. This will lead to technical errors regarding serving and errors in the serve records, which could lead to postponement of scheduled hearings due to improper serving of court summons and briefs.

Procedural deadlines will continue to expire.

Which measures will remain in place?

All of the measures taken during the crisis that were explained in this report are temporary, and as such, none of them will remain in effect after the crisis has passed. The Government of Serbia issued a decree on fiscal benefits and direct financial benefits to companies in the private sector and monetary help to citizens with a goal to mitigate the economic consequences of COVID-19 (in effect beginning from April 10<sup>th</sup>, 2020). From the provisions of this decree stems that companies that are using direct financial benefits will open a special bank account for this purpose. Monetary assets on this special bank account are exempt from enforced collection, except on the order of the Tax administration if a company loses the right to these benefits. These special bank accounts are closed when the decree goes out of effect, if the company loses or didn't fulfill the rights to these benefits at all. If the assets from this special bank account were not transferred to another bank account of the company in the moment of closure, these assets will be returned.

Will enforcement of economic crime, including corruption matters be weakened due to the lack of financial resources?

An anti-corruption department was founded at the Republic public prosecutor's office in 2008. In 2010 anti-corruption departments were founded at Appellate and Higher public prosecutor's offices in 4 main cities for whole state. These department already had a lot of cases and before the crisis they had very modest capacities and resources. It is to be expected that after the crisis it will have even less. Because they will be overloaded with new cases and still with lack of capacity.

Do you expect a rise of new anti-corruption prosecutions after the crisis?

No. Given that Republic of Serbia has the ones that were founded in 2008 and 2010, it is not to be expected that another one will be founded.

Will the ratio of third party funded matter rise?

Third party funding are formally not allowed in Republic of Serbia. Only parties in the proceedings may have the obligation to pay the expenses of the proceedings at its end. Effects of third party funding may be obtained through the contractual institute of change of creditors (cession), where the receivable from a certain contract is transferred to another creditor. This is not third party funding, but sale of a receivable to someone that becomes a new creditor. There are three possible situations where this can be done: before the litigation, during the litigation and after the litigation. If the cession is done before the litigation, a contract is concluded between the previous creditor and the new creditor, who gains all the rights of the previous creditor. There is no need for consent from the debtor, but the previous creditor only has the obligation to inform the debtor of the transfer. If the cession is done during the litigation, a new creditor may step into the position of the plaintiff instead of the previous creditor with all the rights of the previous creditor. The defendant must give his consent for the change of plaintiff in the ongoing proceedings if he has already engaged in the discussion on the merits. After the litigation in which a court verdict was rendered, it can also be transferred onto the new creditor as the sale of receivables. There is no need for consent of the debtor, but the previous creditor has the obligation to inform the debtor of the transfer.

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