

## Justice during the Pandemic, in Spain.

The terrible Covid-19 pandemic in which we are involved, not only in Spain, but throughout the world, will have relevant legal consequences, as we already all know. The inevitable economic crisis derived from this pandemic **will affect several legal aspects and principles.**

After my opinion, **the most affected will be**

- **the general theory of contracts,**
- **the insolvency situations and**
- **the labor relationships.**

Referring to the **theory of contracts**, a lot of legal relationships will be affected because it will very difficult for one of the parties to continue complying with an agreement signed under circumstances having radically changed.

**A huge number of contracts will be under this situation.**

Without forgetting the principle of "*pacta sunt servanda*" (agreements have to be fulfilled) legal remedies will have to fit the principles of "*force majeure*" and "*rebus sic stantibus*" (restoration of an agreement that has turned unbalanced by unpredictable events), to settle these issues.

On the other hand, and due to this situation, a lot of companies and individual entrepreneurs will come into **unavoidable financial difficulties**. For these cases, our law has rapidly react **retarding any deadline to lodge any proceeding of insolvency** until the end of the year, to allow the entrepreneurs to try to recover their business.

Finally, **all this situation affects employment**; thousands of people losing their work and claiming their rights.

In spite of the measures that have been implemented to suspend or reduce work, a lot of business will not be able to resist.

Courts, as all other activities that can concentrate lot of people, **has been almost entirely stopped**, and **only urgent matters are to be attended**. Access to justice has been organized for when the state of alarm will be over, and some measures have been adopted to manage with all the conflicts that are arising during this period without normal working Courts.

The **measures to organize the Courts** in order to confront the effects of Covid-19 are about **(1) procedural measures, (2) insolvency measures and (3) technological measures.**

(1) The goal of the **procedural measures** is to discharge concentration of lawsuits to be filed. The most polemic procedural measure implied is to active the period between 11<sup>th</sup> and 31<sup>st</sup> August, while August has been always Court holydays.

Additionally, all the **time schedules and deadlines of the different matters** and procedures that may have been suspended will, **either re-start entirely again**, or be

**enlarged considerably**, to avoid the collapse, and to allow to attend, until the rest of the year 2020, some priority matters, like:

- Issues with minors
- Conflicts on stoppage of mortgages or rentals.
- Conflicts on public aids or subsidies related to pandemic.
- Conflicts on labor relations, due to pandemic measures.

(2) On **insolvency measures**, the law wants to give an especially long timebar period to organize again and to refloat the business until end of the year 2020. During this lapse of time, no insolvency claims from creditors will be accepted, giving time to the debtor to file his own insolvency proceedings.

A special time bar of one year has been adopted to allow debtors to negotiate once again their payment conventions.

During one year after termination of the estate of alarm, only urgent issues will be solved.

(3) Finally, the law implies **technological measures** to reduce presence organizing hearings on-line, and reducing presential formalities as much as possible.

This means the **implementation of technological tools at any court**, which is still a pending challenge; at least, it will be a benefit that will remain.

In general, **rules have been implemented to refrain the effect of the wave of proceedings**, in the confidence to speed the proceedings, and to avoid **physical contact**.

However, the number of proceedings will be **extremely high**; even if at this moment the tribunals only work in urgent matters, the filing of lawsuits is possible; some 2.500 proceedings have been already filed at Barcelona's Courts.

And these new proceedings, and the new ones during and after the state of alarm, arrive to **a judicial system which is already collapsed**.

Nowadays, before the pandemic, hearings in some tribunals were already being appointed **over six to nine months**, or even more.

It is often said that **late justice is not justice**, and therefore, the access to justice will be not satisfactory.

Some rules implemented for the pandemic effects, **oblige consumers and providers** of services and goods to **try to reach agreements for adaptation of their relationships** to the situation for 60 days before resolving, when the agreement could or may not be fulfilled properly (for instance, closed fitness clubs, closed learning centers, concerted weddings and celebrations, lack of deliveries).

It is clear that **countless lawsuits** will be filed because of contractual relationships, in which the parties have not reached an agreement.

**An already collapsed justice cannot afford this new situation**, and it is time for intensively promote **mediation and arbitration**,

We, lawyers, have to lead the way to **provide justice by promoting agreements out of courts** between the parts in conflicts. It is clearly time now to let mediation and arbitration display their advantages.

It will be the only way, in most of the cases, to obtain not only justice, but satisfactory results for the parties.

We have to keep in mind, however, that these ADR means **should be a choice and not a necessity**, since the citizen shall have the **right of access to justice**; of course, we are confronted to an extraordinary and unpredictable situation, but the citizen will suffer more than if the system were not already so overloaded.

This happens when justice is not a priority for the governors.

The **situation of criminal proceedings** is quite different ; of course, all these rules do not affect to proceedings in which **fundamental rights** could be affected. For those files, courts have **maintained their activity**.

Procedures of *habeas corpus*, incidents with prison conditions and permissions, gender violence, and all non-delayable issues are treated.

However, there are some issues affecting substantial rights, like the provision implemented by the Royal decree declaring the state of alarm, by **suspending the deadline of prescription of all acting's and rights, without further clarification**: the problem is that, since no more clarification was made, we do not know if this suspension means an **enlargement of the statute of limitation of delicts**. In fact, it should not, since the access of justice during that time is possible for urgent matters, and because this interpretation would affect constitutional rights, but the debate is open.

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