



MAR. 20

DISPUTE RESOLUTION AND ARBITRATION

# Coronavirus: Exceptional and temporary measures applicable to court

The international public health emergency caused by the Coronavirus (COVID-19) was declared a pandemic by the World Health Organization and the Portuguese authorities recently announced of a state of emergency across the country. Against this background, the authorities have been approving various packages of exceptional and temporary measures to respond to the spread of the virus.

Rita Samoreno  
Gomes

Petra  
Carreira

The international public health emergency caused by the Coronavirus (COVID-19) was declared a pandemic by the World Health Organization and the Portuguese authorities recently announced of a state of emergency across the country. Against this background, the authorities have been approving various packages of exceptional and temporary measures to respond to the spread of the virus.

In view of the fast and unpredictable development of this situation and the urgency in implementing response measures in various areas severely affected by the public health crisis we are facing, in Portugal as in other countries, these measures have been being approved on an almost daily basis.

**"Procedural time limits are suspended by application of the rules on court holidays and, as a rule, no procedural acts are done, with the exception of automatic acts."**

More specifically, in the justice sector and with an impact on civil proceedings, Law no. 1-A/2020 of 18 March was published on 19 March. This Law, together with Decree-Law no. 10-A/2020 of 13 March, establishes, among others, an exceptional system for carrying out procedural steps, calculating procedural time limits and with regard to specific grounds as reasonable excuses for not carrying out or attending procedural acts. This legislation will remain in force until the exceptional situation for the prevention, mitigation and treatment of COVID-19 disease has ended. The end of the situation and, with it, the end of the temporary system approved in this legislative package, must be declared by a decree-law.

**1. Temporary rules for calculating procedural time limits**

what will then happen to the procedural time limits and steps in civil proceedings?

**In non-urgent cases:**

- Procedural time limits are suspended by application of the rules on court holidays and, as a rule, no procedural acts are done, with the exception of automatic acts (for example, the distribution of cases to the appropriate courts).
- Acts can be done by means of distance communication (for example, teleconferences or video calls), provided the court has the technology to do so.
- Although the law is not clear, it also appears that procedural acts may be done by electronic means (using the Citius platform), although the procedural time limits for this are suspended.
- Where the conditions are met, the following acts continue to be done:
  - i) Service of process and notifications;
  - ii) Records of attachment/seizure;
  - iii) Acts intended to avoid irreparable damage (for example. some attachments/seizures that meet these requirements).
- Where the conditions are met, in particular where, for health reasons, judges are not prevented from doing so, judgments and even some orders will hopefully be handed down. This is common practice during court holidays, and some judges have already shown their willingness to do so, recalling that they are not on holiday.

Non-urgent cases include, in general, declarative actions, except for interim injunctions, and enforcement actions.

**In urgent cases:**

- The procedural time limits are suspended except in cases where fundamental rights are at issue - in particular, those relating to minors at risk, urgent guardianship cases, and cases involving defendants. In these cases, in certain circumstances, acts and procedural steps can be dealt with in person.

Although the list of cases in which fundamental rights are at issue is not exhaustive, the legislature has not specified in any detail what other cases could meet this requirement. Therefore, everything will depend on how the concept is interpreted by the courts.

- Acts can be done by means of distance communication (for example, teleconferences or video calls), provided the court has the technology to do so.

The intention behind this legislation seems to be to suspend the time limits, even in urgent cases, except for the cases referred to above. However, it seems possible to interpret the law to mean that doing acts by means of distance communication includes doing them on the Citius platform. If that is so, the time limits will not be suspended

- Regardless of whether or not the relevant time limit is suspended, all acts may be done through the Citius platform, under the terms set out above for non-urgent proceedings.
- Judgements may be given in accordance with the above terms for non-urgent cases.

Urgent cases include interim injunctions, insolvency proceedings and Special Revitalisation Processes (PERs).

**In both urgent and non-urgent cases**, steps such as creditors' meetings, prior hearings and trials can be held in person- when fundamental rights are at issue. However, these steps can only go ahead in person if the number of people present does not exceed the number recommended by the health authorities and they must follow the guidelines of the superior judicial councils.

However, whenever possible, in particular in urgent cases, the courts can do these acts by means of distance communication, as referred to above.

**2. Special in invoking a reasonable excuse and closure of courts or other premises where acts are to be done – Articles 14 and 15 of Decree-Law No. 10-A/2020, of 13 March**

The rules set out below were created to safeguard public health and they even apply even to court cases in which the time limits have not been suspended and to the steps which, as explained above, should be taken even during this exceptional period:

- Whenever a health authority declares that a party, its representatives, lawyers or any other person involved in the proceedings need to go into isolation to prevent the possible spread of COVID-19, this statement will be a reasonable excuse for not doing any procedural acts in person at judicial courts or other legal authorities.
- The above declaration will also be a reasonable excuse for not attending any procedural acts at the above bodies and for their adjournment.

- The premises where judicial or administrative acts have to be done may be closed, or in-person service at these premises may be suspended, by decision of a public authority based on the risk of COVID-19 infection. If this happens, the time limits for doing the procedural acts will be suspended from the date of closure or suspension of services until a decision is made to re-open the premises.

### 3. Additional suspensions

Law no. 1-A/2020 establishes other important measures:

- Limitation and prescription periods *for all types of proceedings* are suspended to prevent the limitation or prescription from taking place as a result of the exceptional situation we are experiencing. This suspension takes precedence over any rules setting maximum mandatory limitation or prescription periods, which are extended for the period the suspension lasts.

**"Limitation and prescription periods for all types of proceedings are suspended to prevent the limitation or prescription from taking place as a result of the exceptional situation we are experiencing."**

- Eviction action and special procedures to recover possession of rented property are suspended when, as result of a court decision, the tenant may be placed in a vulnerable situation due to not having anywhere to live.
- The transitional suspension rules apply, among others, with the necessary adaptations, to procedures in registry offices, such as the Out-of-court Business Recovery Scheme (RERE), in which the current time limits are suspended, including the time limit for negotiations resulting from the negotiation protocol.

Decree-Law 10-A/2020 took effect in three stages: all its rules came into force on 12 March, except for articles 14 and 15 referred to above (and article 16), which took effect on 9 March, and the provisions laid down in Chapter VIII relating to social protection measures in relation to sickness and parenthood, which came into force on 3 March. In turn, Law no. 1-A/2020 establishes that it takes effect on the date on which Decree-Law no. 10-A/2020 took effect, but it does not specify which of the dates it refers to. Therefore, in order to avoid running any risks, 12 March should be considered as the date on which Law no. 1-A/2020 took effect.

As a result of legislative measures described above and interpreted in accordance with the other applicable legislation, we advise our clients to:

- Check the situation of the court where the cases are pending or the court with jurisdiction to hear the case. If it has been closed by a decision of the public authorities because of a risk of the spread of COVID-19, all time limits are suspended, and it is not expected that any steps can be taken until a decision by a public authority is made to re-open them.

- Check whether the case is urgent or not. If it is urgent, even though the legislation is also intended to suspend the deadlines in these cases, given the lack of clarity of the law, it would be prudent to do any acts that can be done using the Citius platform, at least until there is a more detailed guidance from the courts to the contrary. Furthermore, it is also advisable not to consider any acts or steps suspended or adjourned without an order from the judge to that effect (or determining that the acts or steps be done by means of distance communication).
- Check whether the case or procedural step involves fundamental rights. Although it appears that the legislature intended to restrict the scope of fundamental rights to cases concerning minors at risk, urgent guardianship cases, and cases involving imprisoned defendants or similar, the law is unclear in that regard. It is therefore possible to interpret this concept more broadly and to argue that the time limits are not suspended in certain cases where other fundamental rights are at issue.
- In the case of steps to be taken, apply to the court to do the act by means of distance communication (for example, a witness testimony or a statement by a party made by its legal representative), where technically and procedurally feasible.
- If a situation arises requiring isolation due to a possible risk of COVID-19 infection, as referred to above, consider applying to the court to decide whether there is a reasonable excuse for not doing a specific procedural act in person and, therefore, being allowed to do it after the original time limit.
- Even if the case is not urgent and does not concern any fundamental rights, assess the pros and cons of continuing to do some of the relevant procedural acts. At this stage, it is not possible to predict how long the current exceptional situation will last. However, when it ends, and the exceptional measures now implemented cease to be in force, it will be important to be as prepared as possible to face all the challenges that will certainly remain.

It should be remembered that fundamental rights include the right to private property, freedom of economic initiative, the right to political participation, freedom of expression, information and the press, workers' rights, consumer rights, the right to housing, and the right to bring a class action.

- Presume that all court hearings or other in-person steps have been adjourned, particularly in cases where fundamental rights are not at stake. However, even in these cases, clients should not presume they have been adjourned without a prior order of the court to that effect.

As we are all aware, unfortunately the situation regarding the COVID-19 pandemic, in Portugal as in other countries, is evolving at a fast and unpredictable pace. According to the Portuguese health authorities, the country is now facing the exponential growth phase of COVID-19. Moreover, at this stage, it is not possible to anticipate how it will develop. As such, the Portuguese authorities may introduce tougher measures to tackle the spread of the pandemic in the coming days or weeks and that these may have an impact on the justice sector.

Our commitment is to continue to monitor this situation very closely and to keep updating and supporting our clients throughout these exceptional circumstances. ■

20 March 2020