

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 the freedom of movement has been restricted, parliament has passed various laws regarding the effects of Covid-19 on the justice system (see in Federal Law Gazette 16/2020 and 24/2020). These laws regulate among other things deadlines, oral hearings, service of court documents, enforcement and insolvency deadlines.

- **Orals hearings** have been postponed. Our next hearing is scheduled to take place in mid May. It remains to be seen whether further restrictions will follow.

In cases where it is urgently necessary to avert danger to life and physical integrity or to prevent irreparable harm, court hearings are still taking place.

We expect that in the future judges might be less reluctant to use the instrument of video conferences. This form of communication has been possible in the past, but rarely used before the Covid-19-crisis. We believe that in particular if foreign parties or witnesses have to travel using air traffic, this tool will become more popular as long as air traffic is restricted.

- All **procedural deadlines** which have not yet expired on 22 March 2020 or which begin to run after 22 March 2020 are suspended until 30 April 2020. All interrupted time limits therefore start to run again on 1 May 2020. The interruption of time limits may be prolonged, should the restrictions continue for a longer period.

Exceptions are possible in specific cases if this is 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** / of prescription for bringing actions before the courts are suspended. The period from 22 March 2020 until the end of 30 April 2020 is not included in the period during which an action, application or statement is to be brought before a court.
- A special protection applies to **tenants of residential property** whose economic capacity has been considerably impaired by the Covid-19 crisis and who are therefore in default with rental payments that would be due in the period from 1 April 2020 to 30 June 2020. 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 also 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.

KNOETZL

- The crisis has an effect on the issuance of **enforcement orders**, deadlines and the possibility to postpone an enforcement. No enforcement orders are issued and executed while measures are in place which restrict the freedom of movement. The deadlines in the enforcement proceedings are also interrupted in the period from 22 March to 30 April 2020. (However, appeals do generally not have a suspensive effect).

The compulsory auction of a property must be postponed without the imposition of a security if the obligated party has gotten into economic difficulties as a result of the Covid-19-crisis and if the enforcement would destroy its economic existence.

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 is not a reason for postponement.

- **Courts continue to operate**, but with reduced staff. For personal appearance without summons, an appointment by telephone is necessary. Judges generally work from home. They can be contacted by telephone or e-mail. Submissions to the court must be submitted either directly to the court and 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.

- Request for **interim injunctions and freeze orders** are considered urgent proceedings which are handled as usually and are not subject to the interruptions of deadlines and postponements of hearings.
- **Lawyers** are allowed to work, however, mostly in the form of the home office. Most clients' meetings are taking place via video conferences.
- **Banks** are open and work as usually – of course under security regulations (1m distance etc.)
- The obligation of the debtor to file an **insolvency petition** in the event of over-indebtedness shall not apply 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.
- The Covid-19 crisis **has further effects for negatively affected parties** : 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, this 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 entrepreneur-consumer transactions and for other legal transactions.

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?

- **Short/medium term perspective :**

Provided the public health situation allows, we expect the special legislation regarding interruption of procedural deadlines and postponement of hearings etc will not be extended after April, 2020. The courts should start getting back into normalcy from May 4th on.

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.

Currently, the reduced economic activity seems to also reduce the number of crimes committed, including fraud. Fraud, a crime in which one individual is targeted as a victim, requires establishing trust, which seems to be frustrated if the fraudster is restricted to social distancing. However, cybercrime attacks (data and equipment theft and banking fraud) are likely to increase, as many offices are currently left empty and home offices are often less well protected. We have observed fraudulent acts being committed in connection with medical goods during the crisis. Deliveries are not made, the quality is not as promised, etc.

- **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, 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 less on prosecuting fraud and corruption, but rather, on other areas 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.

Contact details: knoetzl.com



Bettina Knoetzl

KNOETZL
Herrengasse 1
1010 Vienna
T + 43 1 34 34 000 200

M + 43 676 844 133 200
bettina.knoetzl@knoetzl.com



Judith Schacherreiter

KNOETZL
Herrengasse 1
1010 Vienna
T + 43 1 34 34 000 230

M + 43 676 844 133 230
judith.schacherreiter@knoetzl.com