

State of alarm: suspension of time limits, court proceedings and maintenance of essential services in the Administration of Justice

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The measures adopted by Royal Decree 463/2020 in relation to the suspension of procedural time frames and time limits, the suspension of court proceedings and the maintenance of essential services in the administration of justice, and limitations on the filing of procedural documents and means of challenge are analysed.

1. Introduction

By way of Royal Decree 463/2020 of 14 March, the government declared a 'state of alarm' throughout all of Spain to manage the health crisis caused by COVID-19 and adopted a series of exceptional measures aimed at containing the transmission and spread of the virus.

This Royal Decree was published and entered into force on 14 March, for a period of 15 calendar days, as established by Art. 116 of the Spanish Constitution, although the government, if necessary, may extend said period of validity.

The measures provided by Royal Decree 463/2020 were supplemented, and in some cases amended, by Royal Decree-law 8/2020 of 17 March on urgent extraordinary measures to deal with the economic and social impact of COVID-19, as well as by Royal Decree 465/2020 of 17 March, both valid for one month as from their entry into force on the day of their publication in the Official Journal of Spain (BOE) on 18 March 2020.

The adoption of these economic measures by way of a Royal Decree-law has been validated by the Constitutional Court provided there is an explicit justification for the need and urgency, assuming that a delay in adopting the measures through ordinary legislative channels could cause harm.

Pursuant to the foregoing, the government uses its declaration of public health emergency and declaration of state of alarm in all of Spain to justify the adoption, via Royal Decree and Royal Decree-law, of these exceptional public health and economic measures to deal with the consequences of the health emergency.

Among the exceptional measures affecting the normal daily life of individuals, businesses and public bodies, the 2nd additional provision of Royal Decree 463/2020 orders the suspension of procedural time limits, with certain exceptions.

The suspension of time limits will be maintained during the validity of the state of alarm and, where applicable, of any extensions thereto with the prior authorisation of the Congress of Deputies, in accordance with Art. 8.2 of Act 4/1981 (second final provision).

In view of the measures contained in Royal Decree 463/2020, the Standing Committee of the General Council of the Judiciary, at an extraordinary meeting held on 14 March 2020, passed a resolution to suspend legal proceedings and procedural time limits throughout all of Spain, with the Administration of Justice ensuring all essential services.

Similarly, in an extraordinary meeting on 18 March 2020, the Standing Committee of the General Council of the Judiciary passed a resolution that, during the state of alarm, procedural documents may only be submitted electronically (LexNET) and not in person, and are limited to procedures that are declared urgent and undeferrable.

We analyse below the essential aspects of these exceptional measures of suspension of legal proceedings and time limits adopted as a result of the declaration of a state of alarm.

2. Suspension of procedural time limits and time frames

The 2nd additional provision of Royal Decree 463/2020 provides for the suspension of the periods and the suspension and interruption of the time limits provided in the procedural laws of all branches of the judiciary; their calculation will be resumed upon the lapse of said Royal Decree or, as the case may be, its extensions.

The first section of the 2nd additional provision establishes, firstly, the suspension of periods and, following the same, the suspension and interruption of time limits.

Spanish procedural law makes a distinction between time frames (or periods) and time limits. While a time limit is the specific date on which a time frame ends or on which a certain procedural action must be carried out, a time frame is the period of time during which a procedural action must be carried out.

Additionally, the first section of the 2nd additional provision makes no distinction between the suspension and interruption of procedural time limits. However, the calculation of time limits “will

resume" when the Royal Decree lapses, which implies that the law intends to suspend and not interrupt time limits.

An interruption of a procedural time limit determines the entire calculation thereof from the moment in which the law lapses. In other words, the entire time limit begins to be calculated anew as soon as it begins to run after the law that decreed its interruption has lapsed. On the other hand, with the suspension of the time limit, the calculation is resumed after the lapse, that is, it will continue to be calculated from where it left off.

If Royal Decree 463/2020 had been intended to interrupt time limits, it would have indicated that the time limits "will begin to be calculated" after the decree lapses. However, the Royal Decree only provides for the resumption of time limits when it lapses. This indicates that we are dealing with a suspension of time limits and not an interruption of the same; furthermore, the provision is titled "suspension" and not "interruption".

The suspension of time limits involves the stoppage of all legal proceedings, except in cases of essential services or urgent actions, by virtue of the Resolutions of the General Council of the Judiciary of 14 and 18 March 2020, which are analysed more in depth in section six below.

Furthermore, Royal Decree 463/2020 provides a series of exceptions to the suspension of time limits in the criminal jurisdiction and other jurisdictions.

Without prejudice to the general suspension of procedural time limits, Royal Decree 463/2020 allows courts to permit any legal proceedings that may be necessary to prevent irreparable harm to the legitimate rights and interests of the parties to the proceeding.

3. Suspension of legal proceedings and maintenance of essential services in the Administration of Justice

In an extraordinary meeting held on 14 March, the Standing Committee of the General Council of the Judiciary approved the suspension of all scheduled legal proceedings and procedural time limits in Spain, except for essential services at the Administration of Justice – a new situation established for extreme circumstances or Scenario 3 – in view of the measures approved by way of Royal Decree 463/2020.

In line with the above, the General Council of the Judiciary, the Ministry of Justice and the Public Prosecutor's Office resolved on 13 March to maintain the essential services for the Administration of Justice (such resolution must be fulfilled by the governing bodies of the different courts), ensuring the following actions:

- Any legal proceedings that could cause irreparable harm if they do not take place.
- Urgent involuntary commitments under Art. 763 of the Spanish Civil Procedure Act (involuntary commitments due to mental disorders).
- The adoption of interim (injunctive and other) relief or other urgent actions, such as measures to protect minors under Art. 158 of the Spanish Civil Code.

- Domestic violence courts will continue to provide duty court services. Specifically, they must ensure the issuance of protection orders and any interim relief related to domestic violence and minors.
- The Civil Registry will offer uninterrupted services during the hours it is open to the public. Specifically, it must ensure the issuance of burial licences, birth certificates by the peremptory deadline and hold weddings in accordance with Art. 52 of the Spanish Civil Code.
- Legal proceedings concerning individuals that have been arrested and other actions that are urgent, such as urgent interim relief, the removal of corpses, entries and searches, etc.
- Any trials involving prisoners or detainees.
- Urgent penitentiary security measures.
- In the judicial review branch, authorisations for urgent health care admissions, fundamental rights, whose resolution is urgent, urgent interim relief and electoral appeals.
- In employment courts, hearings declared urgent by law and urgent and priority interim relief, as well as collective redundancy schemes (ERE and ERTes).
- In general, procedures in which a violation of fundamental rights is claimed and which are urgent and priority (i.e., proceedings which, if delayed, would prevent or endanger the protection of fundamental rights).
- The presiding judge of the High Court of Justice, the presiding judge of the Court of Appeals and the Chief Judge will adopt measures relating to the stoppage of activity in their respective courts and the closure and/or evacuation thereof if necessary, informing the competent Monitoring Committee, with which it must coordinate its actions.

The resolution of the General Council of the Judiciary states that Scenario 3 will apply to all of Spain for the duration of the state of alarm, meaning that the procedural actions and measures set forth in this scenario are immediately applicable, with no exceptions, to the entire country.

The activity of civil servants of the Ministry of Justice was suspended by the Decision of the State Secretary of Justice of 14 March, except for the provision of the aforementioned essential services at the Administration of Justice.

Additionally, it has been decided to keep court buildings open and operative for the purposes of providing the aforementioned essential services.

Lastly, access to the courts by professionals and the public will be limited to necessary and urgent procedures as well as to attend trials or hearings to which they are summoned. Any other procedure or formality relating to essential, necessary or urgent services must be carried out via LexNET, electronically or by phone.

4. Limits to the submission of procedural documents

Lastly, on 18 March 2020, the Standing Committee of the General Council of the Judiciary resolved that, during the state of alarm, only procedural documents related to proceedings that have been declared urgent can be accepted. Furthermore, any such filing cannot be submitted in person, but rather must be filed electronically via (LexNET).

Thus, the suspension of procedural time limits and proceedings does not prevent the branches of the judiciary from adopting legal measures that may be necessary to prevent irreparable damage to the legitimate rights and interests of the parties to the proceedings. Therefore, said suspension does not affect the filing of procedural documents related to urgent and necessary legal proceedings.

5. Means of contesting Royal Decree 463/2020

The Constitutional Court recognised, in its Order 7/2012 and its Judgement 83/2016 regarding the state of alarm decreed by Royal Decree 1673/2010 to normalise air transport during the air-controllers strike, and Royal Decree 1717/2010, which extended it, the legislative nature of the government's decision to declare the state of alarm, insofar as it stipulates the applicable legality during its validity, but affirms that, although formalised via a royal decree, it must be equated to a rule with the force of an act of parliament, due to both its content and its effects.

Given it has the force of an act of parliament, Royal Decree 463/2020 declaring the state of alarm or any extensions thereto may only be contested before the Constitutional Court via the procedures established in the Constitution or in the Constitutional Court Act, whose purpose is the constitutional screening of laws, provisions and acts with force of acts of parliament (Constitutional Court judgement 83/2016).

With respect to the acts and provisions to which it is applicable, the aforementioned judgement recognises two forms of review:

- a) "judicial review by the ordinary courts of acts or provisions issued in the application thereof during the state of alarm"; and
- b) "the possibility that the affected persons may lodge a constitutional appeal after exhausting the ordinary judicial track, against any acts and provisions issued in application of those royal decrees when they are deemed detrimental to fundamental rights or public liberties protected via this constitutional procedure, a power conferred by Art. 55(2) of the Constitutional Court Act."

This constitutional control will have to be carried out when the Royal Decree, or where applicable, the extensions thereto, lapse, as in the branches of the judiciary, the suspension of legal proceedings not considered essential services as indicated in section 5 above is added to the suspension of all procedural time limits in the judicial review jurisdiction, with only two exceptions: proceedings for the protection of fundamental rights established in Arts. 114 *et seq.* of the Judicial Review Act and the processing of judicial authorisations under Art. 8(6)).