

Analysis and first assessments of the 28th April Royal Decree-Law 16/2020, on procedural and organisational measures to deal with Covid-19 in the scope of the Administration of Justice

29th April 2020

Regarding 28th April Royal Decree Law 16/2020 on procedural and organisational measures to deal with COVID-19 in the area of the administration of justice

Restarting and extending the working out of procedural deadlines, possible modification of the timetables of the judicial bodies, August authorisation, stimulation of electronic means and prioritisation of certain procedures are some of the measures included in [Royal Decree-Law 16/2020](#) approved in the Council of Ministers yesterday, and published today in the Official State Gazette, to try to meet the challenge of reactivating justice in Spain after the state of alert.

A few days ago, the General Council of the Judiciary submitted to the Ministry of Justice a series of regulatory proposals for inclusion in the Royal Decree-Law that it was preparing in order to reactivate the activity of the Administration of Justice after the state of alert.

The Royal Decree-Law approved today is structured in three chapters and has a total of 28 articles, four additional provisions, two transitory, one derogatory and seven final provisions. The most relevant measures are as follows:

1. Urgent procedural measures: Chapter I, Articles 1 to 7

In this first chapter, the approved Royal Decree-Law adopts a series of measures which, according to its own Explanatory Memorandum, aim to resume the ordinary activity of the courts and respond to the foreseeable increase in litigation that will result from the health crisis. To this end, the main measures adopted are as follows:

(i) Qualifying days

Article one, undoubtedly one of the most important, provides for the procedural authorization of the 11th to 31st of August 2020 (with the exception of Saturdays, Sundays and holidays), declaring urgent all legal proceedings under the terms of Article 183 of the Organic Law of the Judiciary.

The above implies that during these dates the procedural periods will not be suspended, and all types of legal proceedings may be held.

In order to put this measure into effect, the Royal Decree-Law empowers legal operators and the Autonomous Communities with jurisdiction in matters of justice to adopt the necessary organisational measures to coordinate the holidays of all personnel in the service of the Administration of Justice.

(ii) Restart and extension of deadlines

Article two regulates the resumption and extension of the procedural deadlines that were suspended as a result of the promulgation of the 14th March Royal Decree 463/2020, which



declared the state of alert for the management of the health crisis situation caused by COVID-19.

It is established, **in general**, that all those periods that were suspended as a consequence of the 14th March Royal Decree 463/2020, which declared the state of alert for the management of the health crisis situation caused by the COVID-19, will be recalculated from the beginning, the first day of calculation being the one following the one in which the suspension of the corresponding procedure ceases to have effect.

This means that if, for example, during the period of suspension established in Royal Decree 463/2020, a response to an ordinary procedure was due, the twenty days established for doing so will be counted again from the time the suspension is lifted.

On the other hand, the time limits relating to the lodging of appeals against resolutions that terminate the procedure, and that such resolutions have been notified during the period of suspension established in Royal Decree 463/2020, or during the twenty working days following the lifting of the suspension of the procedure, **are specifically regulated**. In these cases, the time limits will be extended by the same period.

If, for example, we have been notified of a judgement during the period of suspension established in Royal Decree 463/2020, and our intention is to appeal against it, the twenty-day period established, in addition to restarting from the moment when the suspension of the proceedings is lifted, will be extended by the same period, and therefore we will have forty working days in which to lodge an appeal.

This case shall also apply to all those resolutions that end the procedure and that are notified during the period of twenty working days following the lifting of the suspension.

(iii) Special family procedure

Articles three to five regulate the creation of a special, summary and specific procedure in family matters for those procedures dealing mainly with access, shared custody and maintenance.

It is established that the court competent to hear these matters will be the one that heard the main or original proceedings, and an expeditious procedure is sought in which the holding of a hearing is provided for, specifically regulating the possibility of an oral trial.

(iv) Preferential treatment of certain procedures

Article 7 provides for the preferential handling of certain proceedings during the period from the lifting of the suspension of procedural deadlines declared by Royal Decree 463/2020 until 31st December 2020. These procedures are as follows:

- In voluntary jurisdiction: those that deal specifically with maintenance matters, and those provided for in articles three to five of the Royal Decree-Law itself.
- In civil jurisdiction: Those that deal with the lack of recognition of the moratorium for the payment of mortgages on habitual residence, on properties affected by economic activity, on rentals or on bankruptcy proceedings of individuals.



- In contentious-administrative jurisdiction: Those procedures before the Public Administration that deal with the denial of aid and measures foreseen to alleviate the effects produced by the health crisis.
- In employment jurisdiction: Procedures that have as their object the dismissal or the extinction of the work contract, impugnation of temporary employment regulation files and, in short, all those that are related to the measures adopted in Royal Decree-Laws 8/2020 and 10/2020.

The preferential nature of these proceedings is without prejudice to the same status as other proceedings under procedural law.

2. Organisational and Technological Measures: Chapter III, Articles 19 to 28

This third chapter regulates measures of an organisational and technological nature aimed at immediately tackling the consequences of the health crisis by trying to find a balance between the necessary reactivation and the health and safety of the officials and professionals involved in the legal field. To this end, the following measures are established:

- Promoting the holding of procedural events by telematic means

Article nineteen provides that during the state of alert and for up to three months after its end, all procedural acts shall be conducted online, provided that the means allow, with the exception of trials for serious crimes in which the physical presence of the accused will be required.

- Restricted access to courtrooms

Article 20 provides for the possibility for the court to limit access to the courtrooms, during the state of alert and up to three months after its end.

- Coroner examinations

Article twenty-one establishes the possibility that, during the validity of the state of alert and up to three months after its end, the coroner reports may be made based on existing medical documentation alone, where this is possible.

- Dispensation from wearing robes

Article twenty-two establishes, for the duration of the state of alarm and up to three months after its end, the dispensation from wearing robes at public hearings.

- Attention to the public by telephone or e-mail

Article 23 gives priority to and encourages contact with judicial bodies, as far as possible, by telephone or e-mail, and for those cases in which physical presence is necessary, an appointment must be made in advance.

- Specialization of courts in matters associated with COVID-19

Article 24 establishes the possibility that, depending on the needs, the Ministry of Justice, following a report from the General Council of the Judiciary and after a mandatory hearing of



the Autonomous Community concerned, may transform the judicial bodies that are pending entry into operation at the time of the entry into force of the Royal Decree into judicial bodies that deal exclusively with procedures associated with the health crisis.

- Referential assignment of judges

Article twenty-five establishes the possibility that judges with territorial affiliation may exercise their jurisdictional functions, on a preferential basis, in judicial bodies dealing with procedures associated with the health crisis.

- Possible change in the working hours of staff in charge of the justice system

Article 27 provides for the possibility of establishing morning and afternoon working days for Justice Administration lawyers and other personnel in the service of the Justice Administration during the period of the state of alert and up to three months after its end.

- Possible inclusion of trainee lawyers

Lastly, Article 28 establishes the possibility for trainee lawyers to carry out their own work as replacements or reinforcements.

3. Other provisions

Highlighted additional, transitional, derogatory and final provisions are:

- The application of time limits in the area of the Civil Registry;
- The retroactive application of Articles 8, 9 and 11 of the Royal Decree.

4. Some assessments

The approved Royal Decree-Law presents modifications and regulatory additions that, without a doubt, will have a certain impact when legal activity is finally totally restarted.

However, a regulation or at least a starting point for interpreting the suspension of the expiry and prescription periods agreed by 14th March Royal Decree 463/2020 is missing, since nothing is indicated in this Royal Decree Law in this respect.

In addition, this Royal Decree Law may raise certain doubts as to its constitutionality, since it agrees on certain measures that are dubious in terms of their fit with the current constitutional framework. In this regard, some of the measures agreed could be considered to modify organic laws that would require, where appropriate, a parliamentary vote.

As far as the adopted organizational measures are concerned, we will have to wait for the reception that they will have by the personnel at the service of the Administration of Justice and the rest of the legal operators, who, in the last few days have already shown their rejection of some of the adopted organizational measures, such as the authorization of the month of August.

On the other hand, considering the means currently available to the vast majority of courts, it is, a priori, very risky to expect that legal acts can be held online.



The adoption of specific measures relating to hygiene and prevention, such as the provision of masks and gloves, or the carrying out of temperature tests when entering centres and courthouses where procedural acts are to be held, is also lacking.

We hope the information is useful and of your interest. At Andersen Tax & Legal we have created a multidisciplinary team to attend to all the questions that may arise on this aspect or in relation to the COVID-19.

For more information please contact:

[Iñigo Rodríguez-Sastre](#) | Partner in the area of Litigation, Insolvency and Arbitration

inigo.rsastre@AndersenTaxLegal.es

[Benjamín Prieto](#) | Partner in the area of Litigation, Insolvency and Arbitration

benjamín.prieto@AndersenTaxLegal.es

[Ignacio del Barrio](#) | Senior Associate in the area of Litigation

ignacio.delbarrio@andersentaxlegal.es

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