

Covid -19 in Romania: Temporary amendments in the field of prescription and termination of rights terms

The Decree no. 190/2020 instituting the state of emergency on the territory of Romania (the “Decree”) lays down, among others, certain measures in the field of prescription and termination of rights, attempting to uphold, under the special and restrictive circumstances of the COVID-19 pandemic, the legitimate rights and interests of creditors facing bad debts, and of other persons, whose legal actions might be prevented due to the current practical limitations.

Article 41 of the Decree provides that “prescription and termination of rights terms do not begin to lapse, and, if they have begun to lapse, they will be suspended during the entire duration of the emergency state instituted under this decree”.

This provision would imply the fact that, temporarily, and during the entire duration thereof, the “state of emergency” has been added to the cases of prevention of start of lapse and suspension of lapse of prescription and termination of rights terms.

It is worthwhile adding that the Civil Code does not provide for such state of emergency as a cause with any impact in the fields of prescription and termination of rights.

However, the Romanian Civil Code provides, as a general rule, that, actually, force majeure is a case during which prescription does not start to lapse. In addition, force majeure is a case of preventing the start of the lapse of and suspending the course of termination of rights terms.

According to the Romanian Civil Code, force majeure is “any external, unpredictable, absolutely invincible and unavoidable event”, and it must be emphasized upon the fact that the state of emergency cannot be equated with force majeure, the former lacking the afore-mentioned characteristics.

Nonetheless, it seems that the drafters of the Decree assimilate, on a temporary basis, the state of emergency with force majeure, because the article of the Decree quoted above goes on to provide that ...” the provisions of article 2532 point 9, 2nd thesis of the Civil Code will be temporary inapplicable”.

The above-mentioned text of the Romanian Civil Code provided that “force majeure, as long as it is temporary, does not constitute a case of suspension of prescription, unless it occurs in the last 6 months before the expiry of the prescription term”.

Thus, under the Decree, any prescription term in the course of lapsing at the beginning of the instituting of the state of emergency, **will be automatically suspended, even if it is not in the last 6 months before the expiry of the term**, for the course of the entire duration of the state of emergency, the latter being assimilated to force majeure.

However, the Decree does not go on to temporarily amend any other effects of the suspension of prescription and termination of rights terms, which will remain applicable, as stated in the Romanian Civil Code.

As a last remark, it must be noted that the assimilation of the state of emergency to force majeure operated in the text of the Decree will be applicable exclusively in the field of prescription and termination of rights terms. It must be, therefore, stated, that the state of emergency will not be invoked as a case of force majeure in the case of the performance of contracts, unless other derogatory legislative texts come into force in the next period.

For any legal matters arising in these special circumstances, please do not hesitate to contact our COVID-19 Help Desk at covidhelpdesk@peterkapartners.com.