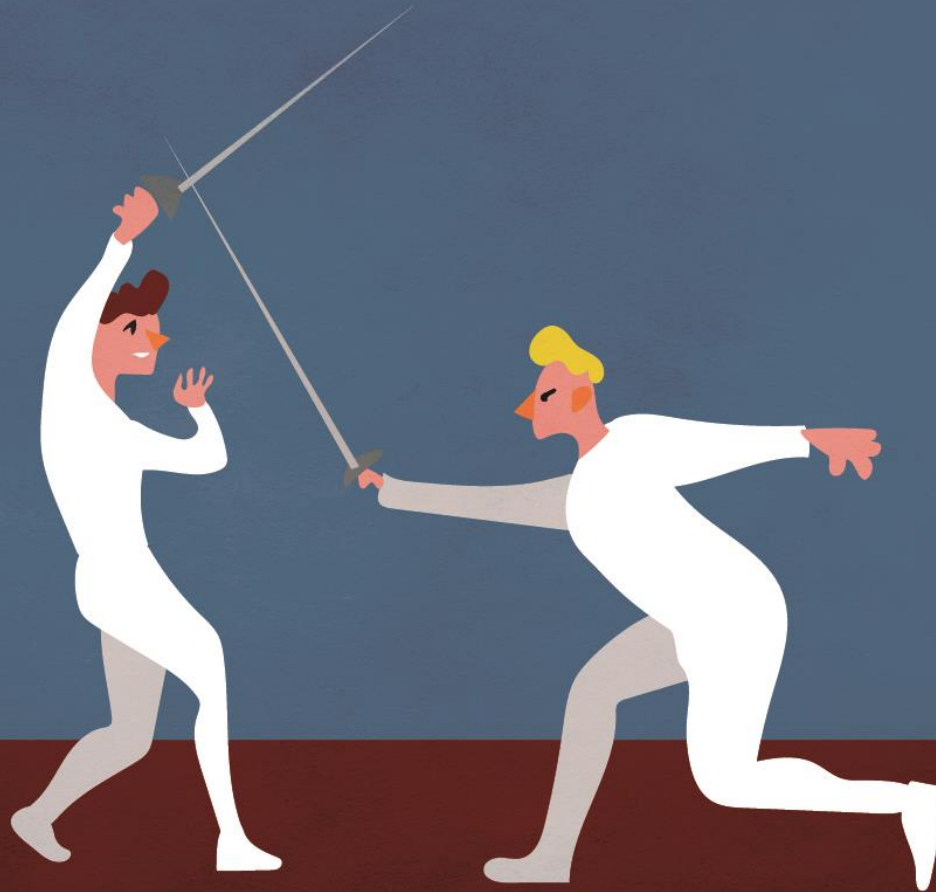
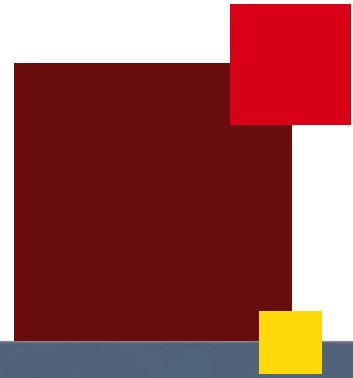




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Analytical Overview of Case Law

RF Supreme Court's Analytical Digest of the Quarantine
Related Issues Arising in Judicial Practice

23 April '20



On April 21, 2020 the RF Supreme Court published an extensive Digest¹ clarifying a wide range of issues that arouse in litigation practice, connected with the spread of the coronavirus disease within the territory of Russia and the imposed self-isolation regime. In this memorandum we analyze key points of the Digest.

1. Procedure for consideration of cases by court during the quarantine

- Where it is not possible to hold a court hearing because of the quarantine, **the court may, but is not obligated** to adjourn the judicial proceedings²;
- Courts have the right to suspend legal proceedings where consideration of the case is not possible in the absence of the parties because of the quarantine. The Digest puts special emphasis on the necessity of suspension of proceedings in a criminal case if the defendant, alleged offender cannot attend the hearing. It is also specifically stated that an administrative case may be considered by court in an expeditious manner if a party in the dispute submits a relevant reasoned request;
- The possibility of suspension of legal proceedings, adjourning of court proceedings in a case will depend on its specifics and is allowed subject to observance of the general procedural periods for examination of the case by court. If a case at hand is a complex one, the period of its examination may be extended by the court's chairman, his deputy or the presiding judge of the bench. This item of the Digest, in our view, implies that a court may consider a case in the absence of parties in the following cases:
 - Key positions of the disputing parties, evidence in the case have been taken and examined by the court;
 - There are no procedural obstacles to the examination of the case on its merits (e.g., trial participants have been given a notice of the date of the court hearing, have been familiarized with the materials of the case);
 - Evidence and legal positions of persons participating in the case, entered in the case file, are sufficient for rendering of a reasoned decision on the merits of the dispute. In other words, if the attendance of the court session by parties in

¹ Digest of Certain Judicial Practice Issues Related to Application of Laws and Regulations and Countermeasures against the Outbreak of the New Coronavirus (COVID-19) Infection within the Territory of the Russian Federation N 1 (Approved by the Presidium of the Supreme Court of the Russian Federation dd. April 21, 2020). Link to the Digest://www.vsrfr.ru/documents/all/28857/

² We have made this conclusion proceeding from the literal interpretation of the provisions of the Digest.

dispute would not principally change the outcome of the hearing, the court may take a decision on the merits of the dispute in the absence of its participants;

- The case has been under consideration for a long period of time and the adjournment of the next court session is not expedient from the viewpoint of procedural economy.
- Cases adjudged by order or in a summary procedure will be handled in the ordinary course and within deadlines set by the RF procedural law.

In view of the foregoing we believe that during the quarantine parties in dispute should take a proactive procedural position and prepare themselves for hearings in the normal course, namely:

- Never fail to submit in advance a motion for postponement of a court hearing, referring to the fact that the dispute is not ready for hearing on the merits, impossibility for the parties to appear in court because of the self-isolation regime, the fact that the total time limit for consideration of the case by court is not expiring in the close time;
- File evidence and procedural documents with the court in advance, being mindful that the court may consider the case “distantly”, based on the materials already entered in the case file.

2. Calculation of procedural periods

The RF Supreme Court stated that the days from March 30 through April 30, 2020, announced to be “non-working” days, are included in procedural periods. We remind that according to the general rule of the RF procedural law, in the event the last day of a procedural period falls on a weekend or a public holiday, such period expires upon expiry of the following working day. For example, if the last day of a one-month period allowed for filing of an appeal expires on Saturday, such day is shifted to the next Monday. **In situations connected with the quarantine this rule will not apply.**

Therefore, in calculation of procedural period the following rules are to be observed:

- The end of the procedural period which falls on non-working days of the quarantine period will not be shifted to the immediately following working day. Therefore, there is the risk of missing of the deadline for taking of an procedural action (for instance, filing of an appeal);

- The imposed quarantine is a valid reason for the restoration of a missed procedural time limit. Therefore, in case the last day to the procedural period falls on the quarantine period, a person involved in the case must file a motion for restoration of the missed time limit, substantiating it by a reference to the Digest;
- Where the date to which the court hearing was adjourned falls on a non-working day, then on the next working day the court must schedule a new hearing for a later date and give a notice thereof to person involved in the case. In this regard we draw your attention to the fact that a court will not always be obligated to postpone a court hearing and may consider the case on its merits during the quarantine, if parties assume passive procedural position.

3. Calculation of limitation periods and deadlines for the fulfilment of obligations.

Statute of limitations

We remind that generally the limitation period is 3 years of the date on which a person became or should have become aware of violation of his right. To some categories of cases a short limitation period applies (e.g., for invalidation of a voidable transaction the duration of such term is 1 year).

It is specified in the Digest that the running of the limitation period is suspended if a force majeure prevented the claimant from filing a lawsuit during the last 6 month of that period. The quarantine was imposed in the RF territory for the period from March 30 through April 30, 2020. Below we give several examples of calculation of a limitation period in connection with the quarantine:

- If the last day of the limitation period falls, for instance, on 15th of March, 2020, then the limitation period will be extended for a six-months term from the date of lifting of the quarantine, i.e. till October 30, 2020, inclusive³ ;
- If the timespan between the date of imposition of the quarantine and the date of expiry or the limitation period exceeds 6 months, the running of the limitation period will not be suspended;
- If the limitation period is shorter than six months, it will be extended for the same period, in case the force majeure occurred at any time during the limitation period.

³ Provided that the quarantine is lifted on April 30, 2020. If the quarantine is extended till May 30, 2020, the limitation period will be extended till November 30, 2020, inclusive.

However, if subsequently the respondent makes a statement to the court about missing of the limitation period by the claimant, then the claimant will have to prove before court that the limitation period has not been missed, considering the occurrence of force majeure, and explain how the self-isolation regime prevented him from filing of the lawsuit in time.

Performace of obligations

The RF Civil code establishes a rule⁴ whereunder non-working days are weekends and public holidays. Therefore, if the deadline for the fulfillment of an obligation falls on one of such days, it is shifted to the nearest working day.⁵

This rule remains in force during the quarantine. It means that non-working days of which the quarantine period is composed do not have the status of holidays or weekends and, according to the general rule, are not shifted to the nearest working day after lifting of the quarantine. This is to the exclusion of instances where a company cannot perform its obligation in due time for objective causes because of force majeure.

4. Force majeure during the quarantine

Force majeure concept

It is highly probable that in the nearest time courts will be considering a greater amount of cases connected with undue performance of obligations in which respondents will refer to circumstances beyond their control (force majeure). Accordingly, the RF Supreme Court paid in it Digest special attention to liability for failure to meet obligations, discharge of contractual obligations in case of force majeure.

We remind that force majeure is an event **which is an emergency in its nature, is unavoidable and beyond control of the company.**

The Digest puts special emphasis on the fact that the imposition of the quarantine because of the coronavirus does not *per se* afford businesses an unconditional right to abandon performance of their obligations towards their contracting parties under contracts in force, referring to force majeure.

A disclaimer of liability because of imposition of the quarantine would paralyze business activity and cause considerable losses for companies expecting that their contracting parties would perform their obligations in due time.

⁴ Article 193 of the RF Civil Code.

⁵ To the exclusion of cases where an obligation, due to its nature, is to be performed in time irrespective of whether the deadline falls on a working or non-working day.

Besides, leaders of constituent entities of the Russian Federation impose restrictions aimed at curbing the spread of the coronavirus disease at their own discretion and such restrictions may differ considerably from region to region, depending on the degree of spread of the disease. For this reason, in the RF Supreme Court's opinion, the coronavirus pandemic has different consequences for companies and individual entrepreneurs, depending on the specifics and scope of their activities, their financial situation the region of their operation.

Therefore, if a litigation with your contracting party is inevitable, your **will have to prove** that the force majeure clause of the contract is indeed applicable.

Signs of force majeure

Whether a company or an individual entrepreneur was able to perform his obligations during the quarantine will be decided by court on case-by-case basis. Accordingly, it is important to know the signs of force majeure. Such signs which took shape through case-law of courts are listed in the Digest:

- **emergency** - means exceptional character of circumstances;
- **unavoidable nature** - means that most of the participants of the business intercourse, acting reasonably and prudently, could not have foreseen or avoided its consequences, or get prepared for it to minimize the risk of failure to perform the obligations;
- **relative nature** - implies comparing of company's activities with behavior of other businesses in a particular sector of economy, as well as taking into consideration the regional specifics, financial situation of the company, nature of decisions taken and behavior of company's management prior to and after the occurrence of the force majeure.

For instance, if the company had been showing losses for a long time and was on the verge of bankruptcy even before the quarantine, then the failure to perform obligations with reference to coronavirus will hardly be regarded by court as force majeure.

At the same time, the lack of funds resulting from the forced closure of an enterprise (for instance a restaurant) and stoppage of operations may constitute force majeure.

Proving of the occurrence of force majeure

If you wish to obtain court's decision reliving you from liability for failure to perform obligations as a result of force majeure, you will have to prove the occurrence of the following complex of circumstances:

- the occurrence and duration of force majeure;
- cause and effect relationships between the force majeure and the inability to perform obligations or the delay in performance of obligations;
- your non-involvement in the creation of force majeure;
- taking by you of reasonably expected measures for the prevention (mitigation) of possible risks.

Only in case the court determines that the above referenced circumstances did exist in a particular case, the reference to force majeure may be held valid. In view of the foregoing we recommend to:

- Closely monitor the imposition, amendment, lifting of restrictive measures in your region, assess the degree to which such measures objectively hinder normal operation of business;
- Where possible, compare the impact of the restrictive measures on your company's business against their impact on business of similar companies operating in the same sector of economy, determine whether those companies were affected to the same extent by the imposed restrictions;
- Assess the possibility for optimization of company's resources, raising of additional financing, recovery of payables for the purpose of making timely payments to creditors;
- Send contracting parties without fail a letter with a detailed description of the existing situation and objective reasons that render your company unable to meet its obligations in time because of force majeure. Moreover, it is not sufficient to give a notice thereof to contracting parties. It is necessary to negotiate with them possible extension of the obligation performance deadline, offsetting of counterclaims.

Giving a notice to the creditor about occurrence of force majeure is obligatory because upon receipt of such a notice the creditor receives the right to withdraw from the contract on the grounds of no longer being interested therein.

If your company does not send such a letter and fails to provide sufficiently convincing reasons for its inability to perform obligations in time and does not try to settle those issues with contracting parties through negotiations, then in the event of a dispute (e.g. over recovery of losses or penalty) the court may refuse to take into consideration the reference to force majeure and take the side of your contracting party.

It is worth specifically mentioning that even if a company proves that force majeure applies to it, **this does not mean that its obligations to the contracting parties are discharged**. It will be temporarily impossible to impose on it liability for the failure to fulfill its obligations in time, however the company will still be under obligation to continue performance of its obligations if force majeure subsides (for example if the quarantine is lifted or does no longer have any considerable impact on company's business).

We expect that such cases will be rather competitive for the parties because both claimants and respondents will have to actively prove the existence or absence of force majeure and its impact on the performance of obligations and the outcome of a dispute will to grate extent depend on correct and considered conduct of the company at the prejudicial stage and the quality of its legal position in court.

5. Bankruptcy and enforcement proceedings

The RF Supreme Court has briefly considered certain matters related to the moratorium on bankruptcy of companies and individual entrepreneurs, affected by the quarantine. We discussed in detail issues associated with the bankruptcy moratorium in our memoranda on this topic⁶, for this reason we will give here just a brief summary of the key points of the relevant block of the Digest:

- If the bankruptcy moratorium applies to a debtor, the court must return the creditor its bankruptcy petition against the creditor without finding out the reason behind the occurrence of the debt;
- Courts have the right to accept and consider claims against respondents (e.g., for recovery of a debt) who are entitled to benefit from the moratorium;
- Enforcement proceedings that commenced prior to the enactment of the bankruptcy moratorium shall be suspended;
- Creditors are still in a position to attach property of their debtors, receive other injunctive relief limiting debtor's opportunity to dispose of its property (for instance, prohibit registration actions with respect to property). Therefore, during the bankruptcy moratorium courts will issue writs of execution to enable the claimant to initiate

⁶ <http://agp.ru/analitika/vvedenie-moratoriya-na-bankrotstvo-organizatsiy-i-individualnykh-predprinimateley-v-2020-godu-obzor/>

<http://agp.ru/analitika/subsidiarnaya-otvetstvennost-i-moratoriy-na-bankrotstvo-analiz-riskov/>

<http://agp.ru/analitika/izmenenie-rezhima-moratoriya-na-bankrotstvo-analiz-ozhidaemykh-popravok-v-zakon-o-bankrotstve/>

enforcement proceedings in context of which an officer of justice would be able to impose the above referenced restrictions;

- A decision on restoration of time periods for filing by creditors of petitions for the inclusion of their claims in the register of creditors' claims, of other time periods applicable to bankruptcy cases, which were missed as a result of imposition of the quarantine, will be taken by the court proceeding from the merits of the case.

6. Administrative offences

The Digest also attends to a number of issues concerning administrative liability of individuals and companies for violations of the quarantine. Here is a brief description of the most important of them:

- The list of officials having the right to draw up administrative offence reports for non-fulfillment of the obligation to protect citizens from emergency situations has been made more specific. They are officers of Police, RF National Guard Troops (Rosgaurdia), the RF Defense Ministry, divisions of the Russian Federation Ministry of Civil Defense and Emergency Response and other persons⁷;
- The limitation period for imposition of administrative liability for non-fulfillment of the obligation to protect citizens from emergency situations is 3 months from the date of discovery of the offence;
- Cases on imposition of administrative liability for non-fulfillment of the obligation to protect citizens from emergency situations are considered by magistrate judges having jurisdiction over the place where the administrative offence was committed (discovered);
- The list of individuals who are obligated in a mandatory manner to comply with the self-isolation regime and who may incur administrative liability for non-compliance therewith has been made more specific. They are:
 - Persons suspected of having contagious form of an infectious disease;

⁷ The full list of officials is set out in the Checklist of officials of managing authorities and forces of the unified governmental system of prevention and elimination of emergency situations, including officials of executive authorities of constitutive entities of the Russian Federation having the right to draw up administrative offence reports under Part 1 of Article 20.6¹ of the RF Code of Administrative Offences (approved by Resolution of the Government of the Russian Federation dated April 12, 2020 No 975-p);

- Persons who arrived in the RF territory, including from a state with unsound epidemiological situation connected the coronavirus disease;
 - Persons who are contacting or contacted with the source of the disease, persons suspected of having contagious form of infectious disease;
 - Persons evading from being treated against a dangerous infectious disease, breaking sanitary and epidemiological regime.
- Thus, there are 2 types of administrative penalty for failure to observe the quarantine. For the above referenced persons in case they do not observe the mandatory quarantine the amount of fine ranges from 15 000 to 40 000 rubles (in case of individuals)⁸. For persons who do not comply with the rules of conduct during the “high state of readiness” regime, set, for instance, by the Order of the Mayor of Moscow, the amount of fine ranges from 1 000 to 30 000 rubles (in case of individuals)⁹.
 - Administrative offence reports (violation of the self-isolation regime) may be drawn up by police officers and officials carrying out State sanitary and epidemiological control. The limitation period for imposition of administrative liability for violation of the self-isolation regime is 1 year. Cases falling within such category are considered by district courts having jurisdiction over the place where the administrative offence was committed (discovered).

⁸ Item 2 of Article 6.3 of the RF Administrative Offence Code.

⁹ Item 1 of Article 20.6.1 of the RF Administrative Offence Code.

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