

Covid Influence in Insolvency in Romania

By Lavinia-Olivia Iancu*

The Covid pandemic installed at the beginning of 2020 influenced the matter of insolvency. A series of measures were adopted to protect de debtors already insolvent on one hand, and new procedures were established on the other hand to ensure the ongoing insolvency proceedings. We can observe a special attention of the legislator in protecting legal person debtors compared to natural person debtors. Although the pandemic deeply affected citizens, they did not access the insolvency procedure of the natural person, but this procedure could represent a solution for overcoming their financial difficulties. The Romanian legislator did not intervene in the modification of the legal text, although the doctrine claimed a complicated procedure, with generally unattractive and interpretable notions. The financial difficulties faced by the business environment convinced the Romanian legislator, in 2022, to focus on insolvency prevention procedures, creating a modern framework for extrajudicial negotiations of the debts with the creditors. Although a year has passed since the end of the state of alert in Romania, and the effects of the pandemic are still visible, the method of administering insolvency procedures that offers effective solutions implemented during Covid period has been preserved.

Keywords: Law; Insolvency; Legal persons; Natural persons; Covid

Introduction

Law no. 85/2015, also known as the Insolvency Code, contains provisions on insolvency prevention procedures, the insolvency proceedings applicable to professionals, as well as the insolvency legislation regarding the credit institutions, insurance and reinsurance companies, groups of companies, and cross-border insolvency. Although the notion “insolvency code” is widely used in Romania, the normative act does not represent a systematisation and a concertation of legislation in a certain field or branch of law subordinated to common principles, in the sense of Law no.24/2000¹. Obviously, this code is incomplete, the insolvency of natural persons or the insolvency of territorial administrative units being currently regulated in other documents.

Romanian insolvency law is characterized in recent doctrine² as ephemeral, slippery and disseminated in too many normative acts.

The legislation on insolvency of legal entities is one with a tradition of over 25 years, the Romanian legislator modifying it to keep pace with the evolution of

*Dr. of Law, Associate professor, Faculty of Economics, Tibiscus University of Timișoara, Romania.
Email: relicons@yahoo.com

¹Art. 18-19 of Law no.24/2000.

²Piperea (2020) at 501.

the society but also with the challenges of economic actors in the market, being appreciated as a modern one.

It was only in 2015 that the Romanian legislator prioritized the necessity of harmonizing the national legislation with the European one and of adopting the Law of insolvency of natural persons No. 151³. The law was adopted on the 25th of June 2015 and it should have entered into force within 6 months from the adoption, on the 25th of December 2015. The deadline for the application of the law was postponed many times and finally, Law No. 151/2015 on the natural person insolvency entered into force as late as the 1st of January 2018. The methodological norms⁴ for the application of Law No. 151/2015 on the natural person insolvency entered into force on the 1st of August 2017. The insolvency commissions at the local and central level were established by the Government Decision No. 11/2016.

In the two years since the entry into force of Law no.151/2015 and until the appearance of the COVID-19 pandemic, the usage by the potential beneficiaries was extremely low, the law being characterized as unattractive to debtors, complicated, with many rules, with vague or interpretable notions, and for this law to become an instrument able to provide clear and concrete solutions to overcome the financial difficulties of individuals, is needed to be changed.

This was the legislative context on insolvency in January 2020 when the first cases of illness with the new Coronavirus were reported.

The Reaction of the Romanian State

The first reaction of the Romanian state appeared on 29.01.2020⁵ when the lack of protective equipment necessary for the intervention and transport of suspected or confirmed patients with the new Coronavirus, but also of certain drugs was notified, it was decided to purchase them as a matter of urgency.

In 24.02.2020⁶ related to the explosion of Coronavirus cases in Italy, in Lombardy Region and Veneto, the home isolation of the persons entering to Romania, from the affected areas, was instituted.

On 09.03.2020⁷ the first decision with a massive impact on the Romanian population was adopted, being suspended for 2 weeks the educational process, it was requested that public institution and economic operators to carry out their jobs

³Law no. 151/2015.

⁴The methodological norms for the application of Law No. 151/2015 on the natural person insolvency procedure, which were approved by the Government Decision No. 419 of the 9th of June 2017, published in the Official Journal of Romania No. 436 of the 13th of June 2017, entered into force on the 1st of August 2017.

⁵Decision no.1 of 29.01.2020 of the Technical Scientific Support Group on the management of highly contagious diseases in Romania within the Department of Emergency Situations of the Ministry of Internal Affairs.

⁶Decision no.2 of 24 February 2020 of the National Committee for Special Emergencies on the approval of measures necessary to increase the capacity to intervene in the prevention and control of infections with the new Coronavirus.

⁷Decision no.6 of 09.03.2020 on the approval of additional measures to combat the new Coronavirus issued by the National Committee for Special Emergency Situation.

from home, some restrictions on transport.

Following a global assessment, the World Health Organisation stated on 09.03.2020, through the General Director Tedros Adhanom Ghebreyesus, that the situation generated by COVID-19 is characterized as a pandemic.

Given the evolution of the international epidemiological situation caused by the spread of the virus in more than 150 countries and taking into account the experience of countries severely affected by the evolution of the virus and the measures that had a positive impact in limiting its spread, the President of Romania declared, on 16.03.2020⁸, the state of emergency for a period of 30 days.

The state of emergency is regulated by art. 93 of the Romanian Constitution and allows exceptional measures to be instituted in cases determined by the occurrence of serious dangers to the defence of the country and national security or constitutional democracy or to prevent, limit and eliminate disasters.

The state of emergency declared to prevent the spread of the virus has meant restricting the exercise of fundamental rights and freedoms on the basis of criteria relating to the intensity of community transmission of the virus, the frequency of outbreaks in a geographical area, the capacity of healthcare system. The fundamental rights and freedoms affected by the state of emergency were: the free movement, the right to privacy, family and private life, the inviolability of home, the right to education, the freedom of assembly, the right to strike and economic freedom.

Despite the measures instituted by the Romanian state during 16.03.2020-14.04.2020, the number of illnesses has increased exponentially, requiring the extension of the state of emergency by another 30 days⁹. From 14.05.2020 the state of alert was declared at national level, being extended every 30 days. The state of alert was declared according to the Emergency Ordinance no.21/2004¹⁰ and represents the response to an emergency situation of special magnitude and intensity, determined by one or more types of risk, consisting in a set of temporary measures, proportional to the level of severity manifested or predicted. It refers to the immediate implementation of action plans and measures to prevent, warn the population, limit and eliminate the consequences of state of emergency. The major difference between the state of emergency and the state of alert is that the latter does not allow the restriction of the exercise of fundamental rights or freedoms¹¹. The state of alert was maintained in Romania for a long time, for the management of the pandemic situation, and ended on March 9, 2022, the date from which all restrictions were lifted.

⁸Decree no.195 of March 16, 2020 regarding the establishment of the state of emergency on the Romanian territory issued by the President of Romania.

⁹Decree no.240 of April 14,2020 on the extension of the state of emergency on the territory of Romania issued by the President of Romania.

¹⁰Government Emergency Ordinance no. 21 on April 15, 2004 on the National Emergency Management System amended by Emergency Ordinance no.68 of May 14, 2020 published in the Official Gazette of Romania no.391 of 14 Mai 2020.

¹¹By the Decision of the Constitutional Court of Romania no.157 of 13 May 2020, the exception of unconstitutionality regarding art.4 of the Government Emergency Ordinance no.21/2004 stating that the provision of this article is constitutional insofar as the actions and measures ordered during the state of alert do not aim at restricting the exercise of certain fundamental rights or freedoms.

Throughout the alert period, there were multiple limitations and restrictions that deeply affected the citizens, but the Romanian state took these measures in order to intervene quickly in the main sectors to combat the effects of the pandemic and to create the framework premises for a quick return to the normality.

In the economic field, measures have been taken to increase responsiveness such as the immediate purchase of goods and services of immediate necessity, the immediate secondment of staff with crisis management skills, the banning of any gathering of people in closed or open spaces, the suspension of the activity of operators offering meals in common areas or consuming food or drinks.

In the field of health, vacancies could be filled directly without competition, it was established the obligation to wear protective mask in open and closed spaces, means of public transport, at work. Public institutions and economic operators were also required to perform epidemiological triage and ensure hand disinfection.

In the field of labour and social protection, work at home has been established, individualised work programs, granting days off for parents to supervise children in the event of temporary closure of schools, the suspension of notice period throughout the alert period, prohibition of collective labour disputes in the key areas such as energy, heat, water, gas, continuous fire units, health and social units, telecommunications, sanitation.

In the field of transport and infrastructure, hygiene and disinfection measures were imposed on the common areas, procedures and protocols specific to each type of transport were applied, the occupancy of transport was restricted and the obligation to inform the population in order to prevent contamination. Also, a lot of traffic restrictions were set and some border points were closed.

In the field of education and research, in order to ensure equal access to education, school inspectorates were required to provide educational resources for students who did not have access to technology in order to continue their education, but online.

In the field of culture, the activity of museums, libraries, bookstores, cinemas, entertainment institution was also restricted for a long time and places worship had strict rules of social distance with which they could work.

The Romanian state has taken a serious economic, legal and fiscal measures to help Romanian companies but also the individuals to overcome the difficult period such as:

- Bonus for the advance payment of the profit tax/income tax of micro enterprises;
- Postponement of VAT payment for importers of Corvid test kits, medicines and protective equipment for COVID-19;
- Postponement from March 30 to June 30, 2020, of the payment term for the building tax, for the land tax, respectively the tax on means of transport, as well as the term for granting the bonus for the advance payment;
- No interest and late payment penalties will be calculated for the fiscal obligations due after the date of entry into force of GEO 29/21 March

- 2020¹², unpaid until the expiration of a 30-day term from the date of cessation of the state of emergency, respectively 16 May 2020;
- Modification of the value of the partial advance payments for the taxpayers who declare the annual profits tax, article 8 of the Government Emergency Ordinance 29/2020. Taxpayers can make partial payment due in 2020 at the amount of profit calculated for the first quarter of this year;
 - Technical unemployment benefits will be able to be reimbursed from the unemployment insurance budget, within the limit of 75% of the average gross earnings, for employees who reduced or temporarily interrupted the activity totally or partially during the state of emergency;
 - Days off granted to parents for the supervision of children, in case of temporary closure of school, for all working days during the state of emergency with an allowance of 75% of the monthly gross salary, but not more than 75% of the average gross salary monthly at national level;
 - Aid for SMEs in the form of postponed payments for utility services: electricity, gas, water, telephone and Internet services and the rent payment as well as state guarantees for loans and other grants;
 - Suspension of enforcement measures in civil matter and commercial claims which has been extended from the state of emergency till the end of the state of alert.

The state of emergency continued with the state of alert led to shutdowns of productive units, closures or suspensions of activity of service units. The most affected sector in Romania was tourism, which includes hotels, restaurants, cafés, but there was also a lot of pressure on the other sectors. Very quickly the world realised that the pandemic situation would last sometime and the consumption of non-essential goods for living have dropped dramatically. The significant decrease of the turnover, the decrease of the sales, the sudden degrees of the consumption of goods and service, the accentuated financial blockage are some of the reasons that led many companies to major financial difficulties.

The effect of these restrictions was quickly seen in the larger number of people who lost their jobs overnight. Moreover, the closure of preschool and school units forced parents to stay home to supervise their children so the number of unemployed has increased rapidly in the pandemic. Romanian government has supported keeping jobs through technical unemployment or subsidizing some of the wages of employees.

At the same time, the pandemic revealed major deficiencies, derived mainly from the lack of investments both in the medical system in Romania, but also in the educational system, which encountered great difficulties in ensuring all students access to the online education. In such a context of economic, educational

¹²Government Emergency Ordinance no. 29/2021 on some economic and fiscal- budgetary measures published in the Official Gazette of Romania, Part I no. 230 of March 21, 2020.

and medical crisis, unprecedented in the last 100 years¹³, the reaction of the Romanian government may seem slow and slightly inefficient.

Insolvency Measures during the Pandemic

By Law no.55/2020¹⁴ on some measures to prevent and combat the effects of the COVID pandemic some changes were operated in the field of insolvency, but strictly on the insolvency of legal entities. It should be noted that the adaptation of the insolvency matter to the new situation generated by the pandemic was of maximum interest to the legislator, these legislative changes coming into force 3 days after the declaration of the state of alert. Thus, the legislator, in addition to essential areas in a pandemic context such as health, labour, transport, economy, dedicated section 8 of Law no.55/2020 to the insolvency, as if anticipating the disaster that would hit companies but also major difficulties that will affect individuals.

The debtor, a legal entity, in a state of insolvency, was able during the state of alert to address a request to the court in order to be subject to the provisions of Law no.85/2014 on insolvency prevention and insolvency proceedings, without having the obligation to introduce this request. If prior to the pandemic, according to art. 66 para (1) of Law no.85/2014, the debtor in a state of insolvency was obliged to formulate the insolvency request within a maximum of 30 days from the occurrence of the state of insolvency, this obligation was removed throughout the state of alert.

Also, for the period of establishing the alert state, the applicability of the final thesis of art. 5 point.72 and the final thesis of art. 143 para. (1) of the Law no.85/2014 were suspended. Art.5 point 72 defines the threshold value, the minimum amount of the claim in order to be able to introduce the request to open the insolvency procedure. The threshold value before the pandemic was 40.000 lei (approximately 8000 euros) for both the debtor and the creditor who intended to formulate the request to open the insolvency procedure.

In the idea of supporting the business affected by the pandemic, the legislator at art. 47 Law no.55/2020 raised for both the debtor and creditor the minimum value for which it could be requested to open the insolvency procedure from 40,000 RON two 50,000 RON (approximately 10.000 euro). Additional conditions have also been imposed on creditors requesting the opening of insolvency proceedings. If before the pandemic the proof of a certain, liquid and due claim was sufficient, the legislator requires now the creditor to prove steps to conclude a payment agreement with the debtor who has interrupted its activity totally or partially as a result of the measures adopted in the state of emergency. It should be noted that this obligation imposed on the creditor only concerns debtors who have

¹³Spanish flu pandemic during 1918-1920 has killed somewhere between 20 - 50 million people https://en.wikipedia.org/wiki/Spanish_flu

¹⁴Law no.55 of 15 May 2020 on measures to prevent and combat the effects of the COVID 19 pandemic, issued by the Romanian Parliament, published in the Official Gazette of Romania no.396 of May 15, 2020 and entered into force on May 18, 2020.

ceased their activity in whole or in part as a result of measures taken during the emergency period. The practical application of these legal provisions becomes difficult as it would mean that the creditor must notify the debtor to find out if during the state of emergency it has partially or totally interrupted activity. Depending on the debtor's response, the creditor will find out whether he can make the request to open insolvency proceedings or is obliged to try to conclude a payment agreement with the debtor prior to the formulation of the request to open the solvency proceedings. Clearly, the reasonable attempt to conclude a payment agreement must be proved by documents communicated by parties by any means, including electronic means.

Also, by Law no.55/2020, the legislator also took into account the situation in which the debtor had a preventive concordat procedure in progress. Thus, if on May 18, 2020, the date of entry into force of the law, the debtor was conducting negotiations with his creditors on the draft of the concordat agreement, this period was extended by 60 days. Depending on the procedural stage of the preventive composition agreement, the period of elaboration of the agreement, the negotiation period of the agreement, respectively the period of the execution of the agreement was extended accordingly by 60 days.

The debtors who were in the judicial reorganisation procedure also benefited from protection, for which the duration of the execution of the reorganisation plan was extended by 3 months. Correspondingly, the period within the categories of entitled persons may propose a reorganisation plan is extended by 3 months, including if the deadline for submission of the plan has begun to run. If at the time of the entry into force of the law, a reorganisation plan was submitted to the case file, but as a result of the effects of the COVID-19 pandemic, or if the recovery prospects were modified, in relation to the possibilities and specifics of the market, the persons entitled to submit a reorganisation plan could, within 3 months from the date of entry into force of the law, to submit a modified plan, notifying the creditors within 15 days, through the care of the judicial administrator.

For the debtor against whom a reorganisation plan has already been approved and confirmed by the syndic judge, the duration of the execution of the plan is extended by 2 months. In case the debtor in reorganisation has completely interrupted his activity as a result of the measures adopted by the authorities, he could request the syndic judge, within 30 days from the date of entry into force of Law no. 55/2020, the suspension of the execution of the plan for a maximum period of two months. Also the debtors who are in judicial reorganisation at the date of entry into force of the law and who have totally or partially interrupted their activity as a result of the measures adopted by the competent public authorities to prevent the spread of the COVID-19 pandemic, the implementation period may be extended without exceeding a total duration of 5 years and may be modified accordingly.

The special attention of the legislator on the debtors, legal entities in reorganisation is obvious, his intention being to offer legal solutions during the state of alert in order to avoid the opening of the bankruptcy procedure. And although these legal provisions are favourable to the debtor, they have proven to be difficult to implement. Changing or modifying a reorganisation plan, in

unprecedented pandemic conditions that have profoundly affected the business environment, without being able to predict the restrictions that will apply or if your business area will work on the market has proven to be difficult.

On July 8, 2020¹⁵, the Insolvency Law was amended, but the legislator did not consider the implementation of new measures related to the pandemic situation. If the threshold value for opening the insolvency proceedings for both the debtor and the creditors during the state of alert was raised to 50.000 lei, the modification imposed this threshold regardless of the existence of the state of alert. Also, since by Law no.55/2020, the creditors were required to prove a liquid and due debt above the threshold value, but also a proof of taking steps to conclude a payment agreement with the debtor, it was necessary to define the notion of „payment agreement”. Thus, in article 5 para. (1) of Law no.85/2014, point 12¹ was introduced, which defines the „payment agreement” as the agreement between the debtor and the creditor regarding the settlement in one or more instalments of the obligations at other terms than the due ones according to the contractual or legal provisions.

By Law no. 216/2022¹⁶, the Romanian legislator continued the modernisation of the insolvency law for the legal persons, the ad-hoc mandate procedure within the insolvency preventive procedures being eliminated and the restructuring agreement procedure introduced.

The restructuring agreement procedure is an insolvency prevention procedure whereby the debtor submits to the syndic judge for confirmation a restructuring agreement negotiated in advance with the creditors whose claims are affected, based on which he restructures his activity and pays all or part of his affected claims within the established period, through the restructuring agreement. Obviously, this procedure applies to professionals in a state of difficulty, but not yet in a state of insolvency. The specificity of this procedure is that not all the company's claims must be affected, the restructuring agreement can expressly provide that certain claims will not be affected by the restructuring agreement.

Also, as an absolute novelty in the field of insolvency, the notion of "early warning" was introduced, which involves alerting professionals by the fiscal body regarding the non-execution of certain obligations to the state budget, the state social insurance and unemployment budget, providing information free of charge regarding the recovery solutions provided by the law.

All the legislative changes on insolvency described above concerned economic operators, professionals who carry out a commercial activity. However, in Romania, the Insolvency Law on Natural Persons was adopted in 2015, which entered into force only in 2018. The legal regulation established on the overindebted individuals has not changed during the pandemic 2020-2022, in fact the legislator has not made any changes to the legal text since the adoption of the law in 2015.

Indeed, with the establishment of the pandemic, a series of social measures were taken to help citizens, but many were already in financial difficulty before

¹⁵Law no. 113 of July 8, 2020 on the approval of the Government Emergency Ordinance no.88/2018 for the amendment and completion of some normative acts in the field of insolvency.

¹⁶Law no.216/2022 for the amendment and completion of Law no.85/2014.

the pandemic, according to a study¹⁷ published in June 2020 which finds that in Romania there are about 7 million people are at risk of poverty or social exclusion, and it is anticipated that the COVID pandemic will raise this figure to 8 million citizens.

In the context of the deep economic and financial damage of the Romanian citizen due to the pandemic, without being able to really anticipate the quantitative or temporal dimension of the disaster, the insolvency procedure of natural person had to appear as a solution.

Some of the reasons why this procedure did not reach the potential beneficiaries, even in the conditions of the pandemic that has certainly initiated or deepened the financial difficulties of many citizens, are provided by the relevant literature. The doctrine on the natural person insolvency in Romania is scarce, yet the authors do agree that the first shape drafted by the legislator - Law No. 151/2015 is not an attractive one for debtors, inasmuch as it is complicated, by many rules, imprecise and interpretable notions and that its modification is required so as to transform it into a tool that would be able to provide clear and concrete solutions in order to exceed the state of financial difficulty of the natural person.

Analysing the devastating economic effects caused by the COVID 19 pandemic and materialised into a global recession, the World Bank draws attention to the national legislators on the importance of the crediting activity. The specialists stress the transparency of the crediting process, the reduction of the credit costs, waiving confidentiality clauses and urgent legislative reforms that would allow an efficient management of the debts of natural persons and legal entities. Furthermore, the adoption of urgent measures to improve and consolidate the legal framework in the matter of insolvency are considered “critical”.¹⁸

If in the matter of the insolvency of the economic operators, the legislator intervened in order to protect the debtors in financial difficulty, the same did not happened in the matter of the insolvency of natural person, although a legal instrument capable of coming to the aid of the citizens in financial difficulty was needed.

The insolvency procedure of legal entities is a judicial one and the insolvency procedure of the individuals can be characterised as a semi-judicial, meaning that they take place with the help of the court, a context in which the organisation of courts in the pandemic period becomes relevant.

Regarding the organisation of the courts, the Superior Council of Magistracy of Romania, the Section for Judges, as result of the declaration of the state of emergency, adopted the Decision no. 191/10.03.2020 which contained recommendations for avoiding crowds such as: for the cases pending hours were set for each case, when only the litigants involved will have access to the courtrooms, breaks for the ventilation of the courtrooms, the submission of documents to be made electronically, changing de procedural terms set in March 2022.

Naturally, the legislator also took a series of measures regarding the judicial system to ensure its functionality during the pandemic period. Thus, by Decree no.

¹⁷Chivu & Georgescu (2020) at 26-27.

¹⁸World Bank,(2021) at 18.

195/16 March 2020, at chapter V, at art. 42 (1) provided that „during the state of emergency, the trial activity continues in cases of special emergency”. In art.42 (6) „the trial of civil cases other than those mentioned in paragraph 1, is suspended by right during the state of emergency, without the need to perform any procedural act for this purpose”. Also, prescriptions and procedural deadline terms did not start, and if they had already started, they were suspended throughout the state of emergency.

The use of videoconferencing was also encouraged, including through rogatory commissions, as well as hearings where public participation was prohibited. All documents have been transmitted by the parties by electronic means, except cases where the persons concerned do not have such electronic means. It was established that the transfer of files from one court to another should be done by electronic means, as well as the notification of court documents to the parties.

Very quickly, the Superior Council of Magistracy, finding the non-unitary practice at the level of courts, by Decision no. 417/24 March 2020 included among the urgent cases that will be judged the request based on article 66 para (11) of Law no. 85/ 2014. Article 66 para (11) of Law no.85/2014 allows the syndic judge to order the temporary suspension of the procedures of force execution of the debtor’s assets until the solution of the request for opening the insolvency procedure is pronounced.

The provisions related to the full suspension of the civil trails initially cause confusion, given the complexity of insolvency cases in which the debtors business is administrated. The clarification was brought by the practice, so that only the insolvency proceedings trials were suspended by law for the entire period of the state of emergency from March 15 till May 15, 2020. Although the suspension of the trails leads to the ban on to perform any procedural act in that case, in reality it was not possible to freeze the administration of the insolvency proceedings. The insolvency procedure is a complex one, that involves a permanent activity of the insolvency practitioner, being impossible to stop the debtor’s activity from a managerial, operational, accounting, economic point of view.

The diversity and complexity of the problems in the insolvency cases, preventive settlement, judiciary reorganisation, bankruptcy, observed by the insolvency practitioners, led the National Union of Insolvency Practitioners in Romania (UNPIR) to the decision¹⁹ to intervene, in order to clarify some issues. Thus, the judicial administrators and liquidators, appointed in the cases have the obligation and the responsibility to continue exercising their mandate in good faith, with the adoption in the current activity of all the measures to prevent the spread of the coronavirus.

Thus, even if the files for the administration of the insolvency procedure were suspended by law, the managerial side of the procedure consisting in the activity of the insolvency petitioner was not stopped. Mention should also be made of the efforts made by the courts and practitioners, in the sense of streamlining the circuit of documents only in electronic format, strictly respecting the deadline imposed for their submission to the case files.

¹⁹Decision of National Union Council of the Insolvency Practitioners from Romania at its meeting on 20 March 2020..

After 15 May 2020, with the cessation of the state of emergency and the transition to the state of alert, all civil cases were resumed *ex officio*. On 12 May 2020, the Superior Council of Magistracy²⁰ of Romania, in connection with the administrative-judicial activity, established: the possibility of adapting the court program, separate schedules for access to the archive of lawyers, insolvency practitioners, experts, the obligation to wear the mask for all the persons on the premises of the court, the organisation of court proceedings by hour, the use of videoconferencing in non-criminal cases, the transmission of documents by electronic means or by post.

Practically, the insolvency practitioners never interrupted the activity and the management of the insolvency files during the state of alert cannot be qualified as difficult because even before the pandemic the communication with the debtors and the creditors was done by electronic means.

Conclusions

Romanian state has taken a series of measures to protect both individuals and legal entities in order to “survive” these difficult pandemic times. Could more be done? Of course, all the time looking back, we find that more and better could have been done, but the authorities focus on the medical aspects of the pandemic must also be put in the balance.

Strictly on the issue of insolvency, we believe that the legislator could have considered at the beginning of the pandemic a profound reform of the legal regime of the insolvency of the individuals containing procedures capable of removing the financial pressure on over-indebted citizens. If companies have been irreparably affected by the pandemic, they end up being removed from the market, but we cannot have the same attitude towards the citizens affected by the pandemic who must continue to live decently.

As the state of alert ended only on March 8, 2022, Romania is today in a period of transition to normality. The impact of the pandemic on companies but also on individuals has been severe and long-lasting, but the negative effects cannot yet be fully quantified.

Certainly, many companies have felt the pandemic hard, but the closure of some companies even with unpaid debts is not an insurmountable problem in business environment in the context in which other companies are being set up at the same time. Moreover, the insolvency law of legal entities no. 85/2014 is a modern one, able to offer solutions for the reorganisation of the business, if it is not irreparably compromised.

Certainly, the living standard of the Romanian citizens has decreased, many of them became over-indebted during the pandemic, and the insolvency procedure of individuals must become a viable solution for the ones who encounter financial difficulties. Law no.151/2015 on the insolvency of natural persons is unattractive to debtors being imperative that it needs the attention of the legislator to become

²⁰Decision no.734 on 12 May 2020 Romanian Superior Council of Magistracy.

an attractive legal instrument and able to provide solutions for individuals with financial difficulties.

References

- Chivu, L. & G. Georgescu (2020) at 26-27. https://mpira.ub.uni-muenchen.de/101676/1/MPRA_paper_101676.pdf
- Piperea, G. (2020). *Commercial Law. General theory, enterprise and insolvency*, Bucharest: C.H.Beck Publishing House.
- World Bank (2021). *Global Economic Prospects*. Washington.

Legislation

- Decision no.1 of 29.01.2020 of the Technical Scientific Support Group on the management of highly contagious diseases in Romania within the Department of Emergency Situations of the Ministry of Internal Affairs.
- Decision no.2 of 24 February 2020 of the National Committee for Special Emergencies on the approval of measures necessary to increase the capacity to intervene in the prevention and control of infections with the new Coronavirus.
- Decision no.6 of 09.03.2020 on the approval of additional measures to combat the new Coronavirus issued by the National Committee for Special Emergency Situation.
- Decision no.734 on 12 May 2020 Romanian Superior Council of Magistracy.
- Decision of the Constitutional Court of Romania no.157 of 13 May 2020, the exception of unconstitutionality regarding art.4 of the Government Emergency Ordinance no.21/2004 stating that the provision of this article is constitutional insofar as the actions and measures ordered during the state of alert do not aim at restricting the exercise of certain fundamental rights or freedoms.
- Decree no.195 of March 16, 2020 regarding the establishment of the state of emergency on the Romanian territory issued by the President of Romania, published in the Official Gazette no.212 of March 16, 2020.
- Decree no.240 of April 14,2020 on the extension of the state of emergency on the territory of Romania issued by the President of Romania, published in the Official gazette of Romania no.311 of April 14, 2020.
- Law no. 151/2015 published in the Official Journal of Romania No. 464 of the 26th of June 2015 and entered into force on the 1st of January 2018.
- Law no.24/2000 regarding the norms of legislative technique for the elaboration of normative acts.
- Law no.55 of 15 May 2020 on measures to prevent and combat the effects of the COVID 19 pandemic, issued by the Romanian Parliament, published in the Official Gazette of Romania no.396 of May 15, 2020 and entered into force on May 18, 2020.
- Law no. 113 of July 8, 2020 on the approval of the Government Emergency Ordinance no.88/2018 for the amendment and completion of same normative acts in the field of insolvency, published in the Official Gazette of Romania no.600 of July 8, 2020
- Law no.216/2022 for the amendment and completion of Law no.85/2014 published in the Official Gazette of Romania no.708 of 14 July, 2022.
- Government Emergency Ordinance no. 21 on April 15,2004 on the National Emergency Management System amended by Emergency Ordinance no.68 of May 14, 2020 published in the Official Gazette of Romania no.391 of 14 Mai 2020.

Government Emergency Ordinance no. 29/2021 on some economic and fiscal- budgetary measures published in the Official Gazette of Romania, Part I no. 230 of March 21, 2020.

