Approved by the Presidium
of the Supreme Court
of the Russian Federation
on 30 April 2020

Review of Certain Issues of Judicial Practice pertaining to the Application of Legislation and Measures Aimed at Preventing the Spread of the Novel Coronavirus Infection (COVID-19) in the Russian Federation, No. 2

In response to the courts' questions regarding the application of legislative amendments and measures aimed at preventing the spread of the novel coronavirus infection (COVID-19) on the territory of the Russian Federation, in order to ensure uniform application of legislation, the Supreme Court of the Russian Federation, guided by Item 1 of Part 7 of Article 2 and Item 7 of Part 1 of Article 7 of Federal Constitutional Law No. 3 of 5 February 2014 "On the Supreme Court of the Russian Federation", deems it necessary to provide clarifications regarding the following issues.

I. General Issues

Question 1: Do clarifications contained in Review of Certain Issues of Judicial Practice pertaining to the Application of Legislation and Measures Aimed at Preventing the Spread of the Novel Coronavirus Infection (COVID-19) in the Russian Federation, No. 1 (hereinafter referred to as Review No. 1) apply to the days declared non-working days in accordance with Executive Order of the President of the Russian Federation No. 294 of 28 April 2020?

Answer: In accordance with Item 1 of Executive Order of the President of the Russian Federation No. 294 of 28 April 2020, non-working days are established from 6 to 8 May 2020 (inclusive of both dates).

The clarifications contained in Review No. 1 apply to these non-working days, including the questions of calculation of procedural periods (Questions 2 and 3), their restoration (Question 4), calculation of periods for the fulfilment of obligations and statute of limitation periods (Question 5), restoration and suspension of the statute of limitation periods (Question 6), restoration of periods stipulated in the legislation on

bankruptcy (Question 11), calculation of periods for entry of decisions in cases on administrative offences into force (Question 26).

II. Issues of Application of Civil Legislation

Question 2: What are the features of performance of credit agreements and loan agreements by a debtor-citizen during the period of measures aimed at preventing the spread of the novel coronavirus infection (COVID-19)?

Answer: Federal Law No. 106 of 3 April 2020 "On Amendments to Federal Law 'On the Central Bank of the Russian Federation (Bank of Russia)' and Certain Legislative Acts of the Russian Federation Regarding the Specifics of Changing the Terms and Conditions of a Credit Contract or Loan Contract" (hereinafter referred to as Law No. 106) establishes the grounds and manner for changing the terms and conditions of a credit contract (loan contract), in particular, at the request of a borrower – a natural person, to whom the loan was granted not in connection with entrepreneurial activities, as regards credit (loan) contracts, both secured and not secured by a mortgage, concluded before the entry of said Law into force.

According to Article 6 of Law No. 106, changing the terms and conditions of the loan contract for such a natural person consists in suspending the performance of the borrower's obligations (grace period) for the period specified in the borrower's request, but not exceeding 6 months, provided that the request is made no later than 30 September 2020.

This right to change the terms and conditions of the loan contract shall be granted to the borrower subject to the following conditions: the loan amount does not exceed the maximum loan amount established for such situations by the Government of the Russian Federation; the borrower's income (the total income of all borrowers) for the month preceding the borrower's request to the lender has reduced by more than 30 % compared to the average income in 2019; the grace period established in accordance with Article 6.1-1 of Federal Law No. 353 of 21 December 2013 "On Consumer Credit (Loan)" is not effective at the time of the request.

The beginning of the grace period is established at the instruction of the borrower, but no earlier than 14 days before the date of request to the lender; for credits (loans) secured by a mortgage – no earlier than a month before the date of request (Part 4 of Article 6 of Law No. 106); for consumer credits (loans) with a credit limit (credit

cards) – no earlier than the date of such a request (Part 28 of Article 6 of Law No. 106).

The condition for granting a grace period in the form of reduction in income by more than 30 % is assumed until proven otherwise, but the lender has the right to request documents confirming this condition from the borrower. If the borrower fails to provide the documents within the statutory period, or if the documents provided do not confirm this condition, the lender shall send the borrower a notice of non-provision of the grace period, upon receipt of which it shall be considered that the borrower's obligations remain unchanged.

Instead of requesting documents from the borrower, the lender may independently request information from the bodies specified in the Law (Parts 7, 8, 29, 30 of Article 6 of Law No. 106).

The terms and conditions of the grace period, in particular the amount and manner for accruing interest, the manner of repayment of the principal debt and interest, the prohibition of accruing forfeits, fines, fees, as well as of foreclosure on the subject matter of pledge, claims against the co-borrower, acceleration of the entire amount of the loan, etc. are stipulated in Law No. 106.

The grace period established by this law and the grace period established in accordance with Article 6.1-1 of Federal Law No. 353 of 21 December 2013 "On Consumer Credit (Loan)", subject to the relevant conditions, may be granted to the same borrower in any sequence, but cannot be established simultaneously.

Regardless of the presence or absence of grounds for granting the grace period stipulated in Law No. 106 and of whether the borrower has exercised its right to change the terms and conditions of the credit agreement (loan agreement) in accordance with the aforementioned Law, the borrower may be exempt from liability for non-performance or improper performance of obligations by virtue of Article 401 of the Civil Code of the Russian Federation (hereinafter referred to as the CC RF), if the breach of obligations was not its fault, in particular if performance was impossible due to extreme and unpreventable circumstances under the given conditions, including those associated with the established restrictive measures (for example, if the borrower could not use the online payment system and could not make payments in the usual way).

The establishment of non-working days by Executive Orders of the President of the Russian Federation No. 206 of 25 March 2020, No. 239 of 2 April 2020 and No. 294 of 28 April 2020 does not constitute grounds for applying the provisions of Article 193 of the CC RF.

However, information letter of the Bank of Russia No. ИН-03-31/32 of 27 March 2020 "On Time Limit for Performance of Obligations" with reference to the specified norm of the law explained that, in relation to the publication of Executive Order of the President of the Russian Federation No. 206 of 25 March 2020 on declaring non-working days from 30 March to 3 April 2020, if the last day of the time limit for performance of an obligation incurred due to provision of a credit (loan) by a borrower of a credit institution, non-bank financial institution falls on the specified period, the time limit expires on the next following working day and postponing the performance of the obligation to the next following working day cannot be considered as violation of the time limit for performance of obligations and, accordingly, shall not be a sign of any overdue payments.

Subject to the foregoing, taking into account the powers of the Bank of Russia and the fact that borrowers could rely in good faith on this clarification, non-payment of contractual payments under the above mentioned credit contracts and loan contracts within the period from 30 March to 3 April 2020 is not a delay in the performance of obligations.

In connection with Executive Order of the President of the Russian Federation No. 239 of 2 April 2020, the Bank of Russia, in its information of 3 April 2020 "On the Work of Financial Organizations and Ensuring Continuity in the Financial Sector by the Bank of Russia within the Period from 4 to 30 April 2020", indicated that the establishment of non-working days from 4 April to 30 April (inclusive of both dates) shall not apply to organizations that provide financial services in terms of urgent functions (primarily, services for settlements and payments). In this regard, the Bank of Russia assumes that obligations under financial transactions due on non-business days must be fulfilled by debtors within the time period established in the contract, and creditors acting in good faith will take into account the actual ability of the debtor to perform the corresponding obligation, whether it is able to perform remote servicing or not, and where remote servicing is impossible, they will also take into account the regime of restrictive measures implemented in the relevant constituent entity of the Russian Federation, which may affect the ability of the client to visit the office of the financial organization in order to perform transactions in a timely manner.

Question 3: From which moment are the obligations of the parties to a lease contract regarded as altered in terms of granting the lessee a postponement of rent payments by virtue of Part 1 of Article 19 of Federal Law No. 98 of 1 April 2020 "On Amendments to Certain Legislative Acts of the Russian Federation Related to the Prevention and Response to Emergencies" (hereinafter referred to as Law No. 98)?

Answer: According to Part 1 of Article 19 of Law No. 98, in respect of real property lease contracts entered into before a public authority of the constituent entity of the Russian Federation adopted a decision to introduce the regime of high alert or emergency situation on the territory of the constituent entity of the Russian Federation in 2020 in accordance with Article 11 of Federal Law No. 68 of 21 December 1994 "On Protection of the Population and Territories against Natural and Human-Made Emergencies" (as amended by Law No. 98), within 30 days from the date of request of the lessee of the corresponding real property, the lessor is obliged to conclude an additional agreement providing for a postponement of rent payments required in 2020. The requirements for the conditions and duration of such a postponement are stipulated by the Government of the Russian Federation.

The Requirements for the Conditions and Duration of Postponement of Rent Payments Under Real Property Lease Contracts (hereinafter referred to as Requirements) were approved by Decree of the Government of the Russian Federation No. 439 of 3 April 2020.

According to Item 3 of the Requirements, the postponement is granted for a period up to 1 October 2020, starting from the date of introduction of the high alert or emergency situation regime on the territory of the constituent entity of the Russian Federation.

The conditions of the postponement stipulated in Item 3 of the Requirements apply to additional agreements (regarding the postponement) to the lease contract, regardless of the date of conclusion of such an agreement (Item 4 of the Requirements).

Thus, the obligations of the parties to the lease contract are regarded as altered in terms of granting the lessee a postponement of rent payments from the date of introduction of the high alert or emergency situation regime on the territory of the constituent entity of the Russian Federation, regardless of the date of entering into the additional agreement to the lease contract or the date of entry into force of the court

decision compelling the lessor to enter into the additional agreement to the lease contract.

The parties to the lease contract can set an earlier time of granting the lessee a postponement of rent payments, taking into account that it is prohibited to deteriorate the lessee's situation in comparison to the conditions stipulated by the Requirements (Item 6 of the Requirements).

In addition, if the lessee did not pay the rent in the amount and at the time established by the lease contract, and the lessor knew or could not have been unaware that the lessee is engaged in activities in the sectors of the Russian economy worst affected by the deteriorating situation due to the spread of the novel coronavirus infection, the lessor notifies the lessee of the latter's right to the postponement in accordance with Law No. 98 (Item 3 of Article 307 of the CC RF). In the absence of such a notification, the lessor is regarded as having granted the lessee the postponement under the conditions set out in Item 3 of the Requirements. Similar consequences apply when the lessor has unreasonably evaded entering into an additional agreement or, by its conduct, given the lessee reasons to believe that the postponement will be granted or has not raised objections to payment by the lessee of the rent under the conditions stipulated in Item 3 of the Requirements (Article 10, Item 3 of Article 432 of the CC RF).

Question 4: Does the fact that the lessee is engaged in activities in the sectors of the Russian economy worst affected by the deteriorating situation due to the spread of the novel coronavirus infection constitute sufficient grounds to grant the lessee of real property a postponement of rent payments by virtue of Part 1 of Article 19 of Law No. 98? In this case, is it necessary to establish the fact that it is impossible to use the leased property for its intended purposes?

Answer: Part 1 of Article 19 of Law No. 98 stipulates that, in respect of real property lease contracts entered into before a public authority of a constituent entity of the Russian Federation adopted a decision to introduce the regime of high alert or emergency situation on the territory of the constituent entity of the Russian Federation in 2020 in accordance with Article 11 of Federal Law No. 68 of 21 December 1994 "On Protection of the Population and Territories against Natural and Human-Made Emergencies" (as amended by Law No. 98), within 30 days from the date of request of the lessee of the corresponding real property, the lessor is obliged to conclude an additional agreement providing for a postponement of rent

payments required in 2020. The requirements for the conditions and duration of such a postponement are stipulated by the Government of the Russian Federation.

According to Item 1 of the Requirements, these requirements apply to conditions and duration of the postponement of rent payments required in 2020 for the use of real property under real property lease contracts concluded prior to a decision made in 2020 by a public authority of the constituent entity of the Russian Federation to introduce the high alert or emergency regime on the territory of the constituent entity of the Russian Federation in accordance with Article 11 of the Federal Law "On Protection of the Population and Territories against Natural and Human-Made Emergencies", and the lessees in which are organizations and individual entrepreneurs engaged in activities in the sectors of the Russian economy worst affected by the deteriorating due to the spread of the novel coronavirus infection.

The list of sectors of the Russian economy worst affected by the deteriorating situation due to the spread of the novel coronavirus infection was approved by Decree of the Government of the Russian Federation No. 434 of 3 April 2020.

The postponement is granted in respect of real property that is state, municipal or private property, with the exception of residential premises (Item 2 of the Requirements).

Thus, the right to postponement of rent payments pursuant to Part 1 of Article 19 of Law No. 98 and on conditions specified in Item 3 of the Requirements belongs to organizations and individual entrepreneurs engaged in activities in the sectors of the Russian economy worst affected by the deteriorating situation due to the spread of the novel coronavirus infection that are lessees of real property, except for residential premises, under lease contracts concluded before the decision specified in this norm, adopted by the public authority of the corresponding constituent entity of the Russian Federation.

In accordance with provisions of said legal norms, it is not required to establish whether there are other additional grounds or conditions for granting the postponement of rent payments by virtue of Part 1 of Article 19 of Law No. 98, in particular the inability to use the leased property for its intended purposes.

However, if the lessor proves that a specific lessee has not been *de facto* affected and evidently will not be affected by the deteriorating situation due to the spread of the novel coronavirus infection, and that its claims are an obvious manifestation of

inequitable conduct (e.g. in case of use of leased property in violation of the established restrictive measures), the court, depending on the facts of the case and given the nature and consequences of such conduct, may refuse to protect the lessee's right in full or in part (Item 2 of Article 10 of the CC RF, Item 1 of Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 25 of 23 June 2015 "On Court Application of Certain Provisions of Section 1 of Part One of the Civil Code of the Russian Federation").

Question 5: From which moment are the obligations of the parties to a lease contract regarded as altered in terms of reducing the amount of rent payments by virtue of Part 3 of Article 19 of Law No. 98?

Answer: In accordance with Part 3 of Article 19 of Law No. 98, the lessee under real property lease contracts has the right to claim for a reduction in rent payments for the period of 2020 due to inability to use the property related to the adoption by the public authority of the constituent entity of the Russian Federation of the decision to introduce the high alert or emergency situation regime on the territory of the constituent entity of the Russian Federation in accordance with Article 11 of Federal Law No. 68 of 21 December 1994 "On Protection of the Population and Territories against Natural and Human-Made Emergencies" (as amended by Law No. 98).

Thus, the rent shall be subject to reduction from the moment when the specified inability to use the property for the originally agreed purposes occurs, regardless of the date of conclusion of an additional agreement to reduce the rent or the date of entry into force of a court decision compelling the lessor to change the lease contract in terms of reduction the rent.

In addition, where there is a claim for rent collection, the lessee may indicate it as an objection to the claim that the lessor unreasonably evaded conclusion of an additional agreement on rent reduction. In this case, the rent payments shall be subject to collection in the amount determined in accordance with the requirements of Part 3 of Article 19 of Law No. 98, for example, the amount of reduced rent can be determined taking into account the amount by which the rent is normally reduced in the current situation.

Question 6: Are the provisions of Article 19 of Law No. 98 applicable to lease contracts regarding a part of a real thing?

Answer: Article 19 of Law No. 98 stipulates special regulation of obligations arising from real property lease contracts concluded prior to the decision by a public authority of a constituent entity of the Russian Federation to introduce the high alert or emergency regime on the territory of the constituent entity of the Russian Federation in 2020 in accordance with Article 11 of Federal Law No. 68 of 21 December 1994 "On Protection of the Population and Territories against Natural and Human-Made Emergencies" (as amended by Law No. 98).

According to Item 1 of Article 606 of the CC RF, under a property lease contract the lessor undertakes to provide the lessee with property for a fee for temporary possession and use or for temporary use.

In accordance with Item 1 of Article 607 of the CC RF, things that do not lose their natural properties in the course of their use (non-consumable things) can be leased. In particular, real things such as buildings, structures and premises can be subject matter of lease.

The courts should take into account that it follows from the systemic interpretation of the aforementioned legal norms (including provisions of Article 606 of the CC RF on the possibility to transfer the leased property to the lessee's use only) that the parties have the right to enter into a lease contract, according to which the lessee does not receive the entire real thing into its use, but only a separate part of it (Item 9 of Review of Case Law pertaining to Challenge of Refusal to Perform Cadastral Registration, approved by the Presidium of the Supreme Court of the Russian Federation on 30 November 2016, Item 25 of Case Law Review of the Supreme Court of the Russian Federation No. 1 (2019) approved by the Presidium of the Supreme Court of the Russian Federation on 24 April 2019).

Law No. 98 does not specify that the provisions of Article 19 of said Law apply only to contracts under which the subject matter of lease is an entire real thing. Consequently, they are also applicable to lease contracts for a part of a real thing.

Question 7: In respect of which periods of delay in 2020 is the forfeit not subject to accrual in case of late and (or) incomplete payment for residential premises, contributions for major repairs and communal services established by the housing legislation of the Russian Federation, as well as for late and (or) incomplete performance of the obligation to pay for services provided in accordance with the legislation of the Russian Federation on gas, electricity, heat, water supply and sewerage?

Answer: Article 18 of Law No. 98 stipulates that until 1 January 2021 the Government of the Russian Federation has the right to establish special features of accrual and payment of fees in case of late and (or) incomplete payment for residential premises and communal services, contributions for major repairs established by the housing legislation of the Russian Federation, as well as the special features of recovery of forfeits (fines, fees).

Pursuant to said norm, the Government of the Russian Federation adopted Decree No. 424 of 2 April 2020 "On Special Features of Providing Communal Services to Owners and Users of Premises in Apartment Houses and Residential Houses" (hereinafter referred to as Decree No. 424), effective from the day of its official publication, 6 April 2020.

According to Item 3 of Decree No. 424, the provisions of contracts concluded in accordance with the legislation of the Russian Federation on gas, electricity, heat, water supply and sewerage, which establish the right of suppliers of communal resources to recover forfeits (fines, fees) for late and (or) incomplete performance of obligation to pay for resources by persons engaged in the management of apartment houses, do not apply until 1 January 2021.

Item 4 of Decree No. 424 also stipulates that the provisions of apartment house management contracts, which establish the right of persons managing apartment houses to recover forfeits (fines, penalties) for late and (or) incomplete payment for residential premises, do not apply until 1 January 2021.

In addition, Item 5 of Decree No. 424 suspended the recovery of forfeits (fines, fees) in case of late and (or) incomplete payment for residential premises and communal services and contributions for major repairs until 1 January 2021.

Thus, the application of the manner for accrual (recovery) of forfeits stipulated in legislation and the terms and conditions of concluded contracts is suspended (a moratorium is established) both as regards the owners and users of premises in apartment houses and residential houses and as regards the persons engaged in management of apartment houses; accordingly, payers are exempt from forfeits for the respective period.

The aforementioned moratorium applies to forfeits (fines, fees) to be accrued for the period of delay from 6 April 2020 until 1 January 2021, regardless of the billing

period (month) within which communal resources (services) were provided, the payment for which was delayed, in particular where the principal amount of debt was incurred prior to 6 April 2020, unless a law or a legal act stipulates a different expiry date of the moratorium.

The rules for suspension of accrual of forfeits within the meaning of Items 3 to 5 of Decree No. 424 are effective regardless of the place of residence or stay of a citizen, location and place of business of a legal person, as well as regardless of the introduction of high alert or emergency situation regime on the territory of a constituent entity of the Russian Federation.

The forfeit is subject to accrual and recovery in the manner stipulated in housing legislation, legislation on gas, electricity, heat, water supply and sewerage and in the terms and conditions of contracts for the entire period of delay, excluding the effective period of the moratorium.

If the decision to recover the corresponding forfeit is made by the court before 1 January 2021 (or, in case of amendments, before another expiry date of the moratorium on forfeit recovery), the court shall indicate the amount of the forfeit calculated for the period before 6 April 2020 in the operative part of the decision. The court refuses to satisfy claims for recovery of the forfeit up to the time of actual performance of the obligation, based on Article 10 of Law No. 98, Items 3–5 of Decree No. 424, as filed prematurely. At the same time, the court shall explain to the plaintiff the right to file such a claim in respect of the days of delay that will occur after the end of the moratorium.

III. Issues of Application of Legislation on Bankruptcy

Question 8: Should a creditor of a debtor that was subject to the moratorium on initiation of bankruptcy cases introduced by the Government of the Russian Federation (hereinafter referred to as the moratorium) send a new notice of intent to file for bankruptcy after the termination of the moratorium, if the bankruptcy case was not initiated pursuant to the previous notice of the creditor?

Answer: According to the first paragraph of Item 2 of Article 9.1 of Federal Law No. 127 of 26 October 2002 “On Insolvency (Bankruptcy)” (hereinafter referred to as the Bankruptcy Law), creditors’ applications for declaring bankruptcy of a debtor

filed to a commercial court during the period of the moratorium, as well as those filed before the day of introduction of the moratorium, the issue of acceptance of which was not resolved by the commercial court by the day of introduction of the moratorium, are subject to be returned by the commercial court.

Within the meaning of the third paragraph of Item 2 of Article 9.1 of the Bankruptcy Law, if the bankruptcy case of a debtor subject to the moratorium was not initiated on the day of introduction of the moratorium, the notice of the creditor's intention to apply to court seeking to declare such a debtor bankrupt becomes invalid.

The fact that the legislator recognised creditors' notifications sent immediately before the moratorium and during its effect as invalid (abrogated) means that after the expiration of the moratorium or after the exclusion of the debtor from the list of persons to which it applies the creditor must repeatedly send the notice of intent to file for the debtor's bankruptcy before submitting its application to declare the debtor bankrupt to the court. The right to initiate a bankruptcy case can be exercised by the creditor after fifteen calendar days since the day of publication of the repeated notice (Item 2.1 of Article 7, ninth paragraph of Item 2 of Article 213.5 of the Bankruptcy Law).

Question 9: Can a bankruptcy case regarding a debtor undergoing liquidation, who is subject to the moratorium, be initiated upon application of a creditor during the period of the moratorium?

Answer: Within the meaning of Item 1 of Article 9.1 of the Bankruptcy Law, the moratorium is aimed at protecting debtors affected by circumstances that gave grounds to its introduction, giving them a chance to overcome the difficult situation and return to normal economic activity.

In a situation where the authorised body of a debtor-legal person has made the decision to liquidate it, it is not assumed that the organization undergoing liquidation will continue to carry out its usual activities, typical of the normal civil turnover. Since the will of the participants (founders) of such a legal person is directed at terminating the organization's existence, it is impossible to implement measures aimed at its preservation by virtue of Item 2 of Article 1 of the CC RF.

In this regard, the mere designation of the liquidated debtor as a person, to whom the moratorium applies, does not prevent the creditor from filing an application to declare bankruptcy of the debtor.

In case of a decision on liquidation, the obligation of the liquidation committee (liquidator) to file an application to declare bankruptcy of the debtor undergoing liquidation likewise persists (Item 3 of Article 9 of the Bankruptcy Law).

Question 10: Is the interest, which is a measure of civil liability stipulated in Article 395 of the CC RF, accrued during the period of the moratorium?

Answer: One of the consequences of the moratorium is the cease of accrual of forfeits (fines and fees) and other financial sanctions for non-performance or improper performance by the debtor of monetary obligations and mandatory payments with respect to claims incurred before the moratorium (Sub-item 2 of Item 3 of Article 9.1, tenth paragraph of Item 1 of Article 63 of the Bankruptcy Law).

Within the meaning of Item 4 of Article 395 of the CC RF, the same legal regime applies to interest that is a measure of civil liability.

Question 11: During the period of the moratorium, do creditors have the right to send writs of execution for the recovery of funds in regard of claims that arose before the introduction of the moratorium directly to the bank or another credit institution, in which the debtor's accounts are opened, in the manner stipulated in legislation on enforcement procedures?

Answer: Banks and other credit institutions, in which the debtor's accounts are opened, are classified as persons authorised to perform actions to enforce the writs of execution.

In this case, Sub-item 4 of Item 3 of Article 9.1 of the Bankruptcy Law stipulates that during the period of the moratorium enforcement proceedings for recovery of property in regard of claims that arose before the introduction of the moratorium are stayed.

The introduction of the moratorium in respect of the debtor also means the inability of the recoverer to obtain enforcement by presenting a writ of execution directly to the bank (credit institution) in the manner stipulated in Part 1 of Article 8 of Federal Law "On Enforcement Proceedings".

IV. Issues of Application of Criminal and Criminal Procedure Legislation

Question 12: In terms of dispositions of Articles 207.1 and 207.2 of the Criminal Code of the Russian Federation (hereinafter referred to as the CrC RF), what should be understood as knowingly false information and its dissemination under the guise of veracious messages?

Answer: For the purposes of Articles 207.1 and 207.2 of the CrC RF, knowingly false information, including that regarding the circumstances of spread of the novel coronavirus infection (COVID-19) on the territory of the Russian Federation and (or) measures taken in this regard to ensure the safety of the population and territories, methods and ways of protection against these circumstances, should be understood as such information (content, messages, data, etc.) that originally contradicts reality, where this is known for a fact to the person disseminating that information.

One of the mandatory conditions for entailment of liability under Article 207.1 or 207.2 of the CrC RF is the dissemination of knowingly false information under the guise of veracious information. For example, the forms, ways and methods of presenting false information (references to competent sources, statements of public persons, etc.), the use of forged documents, video and audio recordings, or of documents and recordings related to other events may be signs that veracious form is given to false information.

The fact that a person places material containing false information (e.g. video, audio, graphic or text materials) created by her-/himself or by another person on the Internet or in another information and telecommunication network, in particular on her/his personal page or on the page of other users (including the so-called “reposting”) can be qualified under Article 207.1 or 207.2 of the CrC RF only where it is established that that person acted with direct intent, understood that the information placed by him/her under the guise of veracious information was false and had the purpose to bring this information to the knowledge of other persons.

Question 13: How should the public nature of dissemination of information referred to in dispositions of Articles 207.1 and 207.2 of the CrC RF be understood?

Answer: The dissemination of knowingly false information referred to in the dispositions of Articles 207.1 and 207.2 of the CrC RF should be recognized as public, if such information is addressed to a group of persons or to the general public

and expressed in any form accessible for them (e.g. oral, written, with the use of technical means).

The issue of whether there is an element of publicity in the dissemination of information must be resolved by the courts taking into account the place, method, situation and other circumstances. Herewith, it should be taken into account that the public nature of dissemination of knowingly false information may be expressed in the use of mass media, information and telecommunication networks, including instant messengers (WhatsApp, Viber and others), in bulk messaging to mobile communication subscribers, dissemination of such information by speaking at an assembly, rally, distribution of leaflets, displaying of placards, etc.

Question 14: In relation to Part 1 of Article 236 of the CrC RF, what should be understood under "mass contagion or poisoning of people" or "creating a danger of such consequences"?

Answer: Taking into account that this element of crime is evaluation-based, when resolving whether to classify contagion or poisoning as a mass one, it is necessary to take into account not only the number of contaged or poisoned people but also the severity of the disease (poisoning). To determine the extent of contagion or poisoning, the court has the right to draw the corresponding specialists to participation, such as representatives of federal executive authorities authorised to perform state sanitary and epidemiological supervision or supervision in the field of consumer protection and human welfare.

Criminal liability for violation of sanitary and epidemiological rules that created a danger of such consequences can only be entailed if such a danger was real, when a mass contagion or poisoning of people was prevented only as a result of timely measures aimed at preventing the spread of the disease (poisoning) taken by public authorities, local self-government bodies, medical professionals and other persons, or as a result of other circumstances that were beyond control of the person that violated said rules.

Question 15: How should criminal liability under Part 2 of Article 236 of the CrC RF be distinguished from administrative liability under Part 3 of Article 6.3 of the Code of the Russian Federation on Administrative Offences (hereinafter – the CAO RF)?

Answer: Administrative liability under Part 3 of Article 6.3 of the CAO RF is entailed only where the actions (failure to act) of the offender do not contain a criminal offense. Due to the fact that violation of sanitary and epidemiological rules by a natural person that entailed death of a person through negligence is subject to criminal liability, in case of consequences in the form of death of a person, the actions (failure to act) of the guilty person should be qualified under Part 2 of Article 236 of the CrC RF.

Where the actions (failure to act) constituting the objective side (*actus reus*) of an administrative offense stipulated in Part 3 of Article 6.3 of the CAO RF result in consequences in the form of personal injury (to a person or several persons), this act is fully covered by the elements of said administrative offence, unless there are elements of the crime stipulated in Part 1 of Article 236 of the CrC RF (mass contagion or poisoning of people or creation of danger of such consequences is established).

Question 16: Is it possible for the courts to consider criminal cases and materials with the use of videoconferencing systems during the period of restrictive measures related to prevention of spread of the novel coronavirus infection (COVID-19) on the territory of the Russian Federation?

Answer: In accordance with the legal positions of the European Court of Human Rights, the use of a videoconferencing system during the trial does not contradict the notion of fair and public hearing of the case, provided that the suspect, accused, defendant kept in custody and participating in the court session is able to follow the progress of the proceedings, see and hear the participants of proceedings, and be heard by the parties and the judge without restriction (see, for example, Item 42 of Judgment of 16 February 2016 in the case of Yevdokimov and Others v. the Russian Federation). The use of a videoconferencing system does not prevent the suspect, accused or defendant from exercising the rights set out in paragraphs 3 (c), (d) and (e) of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, i.e. the right to “to defend himself in person”, “to examine or have examined witnesses” and “to have the free assistance of an interpreter if he cannot understand or speak the language used in court”, other rights, stipulated, in particular, in the criminal procedure legislation of the Russian Federation.

In view of the above and taking into account that the novel coronavirus infection is included into the List of Diseases Posing a Danger to the Public by Decree No. 66 of

the Government of the Russian Federation of 31 January 2020, in the context of restrictive measures related to preventing the spread of the infection, in particular in order to ensure the sanitary and epidemiological security of participants of criminal proceedings, the court may hold the whole trial with the use of videoconferencing systems for every criminal case or material that requires urgent consideration, subject to the quarantine measures implemented in pre-trial detention centres and the self-isolation regime established for all citizens in order to prevent the spread of the infection, thus ensuring personal participation and due procedural rights of the suspect, accused, defendant and other persons in the court session.

Question 17: Is it possible to regard motions of preliminary investigation bodies for seizure of property and extension of seizure of that property as materials requiring urgent consideration?

Answer: In accordance with Part 1 of Article 160.1 of the Criminal Procedure Code of the Russian Federation (hereinafter – the CrPC RF), if it is established in a criminal case that the crime caused property damage, and the victim may file a civil lawsuit seeking compensation of the damage, as well as in other situations specified in that norm, the investigator and the preliminary investigation officer are obliged to take urgent measures to discover the property of the suspect, accused or of persons liable for the damage caused by the suspect, accused in accordance with the legislation of the Russian Federation, and to seize this property by filing the appropriate motion to the court. Taking into account the fact that this duty was assigned to the investigator, preliminary investigation officer due to the need to protect the right of the victims of crime to compensation for damage caused to them, guaranteed by the Constitution of the Russian Federation (Article 52), and is related to the restriction of the constitutional right to private property, the consideration of motions of preliminary investigation bodies regarding the seizure of property and extension of seizure of that property should be recognized as urgent.

Question 18: Are motions of convicted persons and their defence lawyers, addresses of correctional institutions or bodies executing punishment regarding conditional early release from service of sentence in accordance with Article 79 of the CrC RF, on replacement of the unserved part of the sentence by a milder punishment in accordance with Article 80 of the CrC RF, on exemption from punishment due to disease of the convicted person in accordance with Article 81 of the CrC RF subject to urgent consideration by the courts?

Answer: Yes, they are, since the right of convicts to ask for mitigation of punishment, as guaranteed by Part 3 of Article 50 of the Constitution of the Russian Federation (which covers the resolution of the issue of conditional early release from service of sentence and the right of convicts suffering from serious illnesses that prevent the service of sentences to ask the court for release from service of sentence), cannot be restricted by any circumstances, including those associated with the spread of the novel coronavirus infection.

Question 19: Based on the premise that remand in custody in respect of a person suspected, accused of committing a minor crime may be ordered or extended only in exceptional cases and when there are grounds stipulated in Part 1 of Article 108 of the CrPC RF, does the court, in presence of such grounds, have the right to order a different, milder pre-trial restriction measure or to replace the remand in custody with a different, milder measure in view of the situation related to the spread of the novel coronavirus infection (COVID-19) on the territory of the Russian Federation and the risks of its spread in temporary detention centres and pre-trial detention centres?

Answer: The decision to order a pre-trial restriction measure in the form of remand in custody or to extend the duration of this measure in respect of a person suspected of a minor crime may be made by the court only in exceptional cases. Moreover, the existence of circumstances stipulated in Part 1 of Article 108 of the CrPC RF does not in itself constitute absolute grounds for satisfying the motion of the preliminary investigation bodies. When deciding to order a pre-trial restriction measure in the form of remand in custody or to extend the duration of this measure in respect of a person suspected, accused of committing a minor crime, the court has the right to take into account, along with other circumstances, the fact of implementation of quarantine measures in pre-trial detention centres in the situation of spread of the novel coronavirus infection (COVID-19) on the territory of the Russian Federation.

V. Issues of Application of Legislation on Administrative Offences

Question 20: Is it mandatory to conduct an administrative investigation in cases on administrative offences stipulated in Articles 6.3 and 20.6.1 of the CAO RF?

Answer: It is allowed to conduct an administrative investigation after the discovery of an administrative offense in the areas of legislation and articles listed in Part 1 of Article 28.7 of the CAO RF.

The administrative investigation is a complex of time-consuming procedural actions aimed at clarifying all the facts of the administrative offense, recording them, legally qualifying and procedurally registering them (Item 3 of Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 5 of 24 March 2005 "On Certain Issues Raised by the Courts in Applying the Code of the Russian Federation on Administrative Offences").

According to the above mentioned norm of the CAO RF, when, after the discovery of administrative offences stipulated in Article 20.6.1 of the CAO RF or administrative offences in the field of sanitary and epidemiological well-being of the population, for example that stipulated in Article 6.3 of the CAO RF, there is a need to carry out a complex of time-consuming procedural actions, an administrative investigation may be conducted.

In this case, according to Part 2 of Article 28.7 of the CAO RF, the issue of conducting an administrative investigation is resolved upon initiation of a case on the administrative offence by an official authorised to draw up an administrative offense report in accordance with Article 28.3 of said Code or by a prosecutor.

In view of the above, the conduct of administrative investigations in cases on administrative offenses stipulated in Articles 6.3 and 20.6.1 of the CAO RF is not mandatory, and the issue of conducting such an investigation is resolved by the persons specified in Article 28.7 of the CAO RF upon initiation of a case on the administrative offence, depending on the need to implement procedural actions aimed at establishing all the facts of the administrative offense, recording, legally qualifying and procedurally registering them.

Question 21: Do the actions of a transport vehicle driver expressed in operating a vehicle with a driver's license that expired on 1 February 2020 or on another day after the specified date constitute the objective side of the administrative offense stipulated in Part 1 of Article 12.7 of the CAO RF?

Answer: Where a vehicle is operated by a driver not authorised to operate the vehicle (except for learner driving), this is subject to qualification under Part 1 of Article 12.7 of the CAO RF.

A person not authorised to operate a vehicle is, in particular, a person whose driver's license has expired (Part 1 of Article 28 of Federal Law No. 196 of 10 December 1995 "On Traffic Safety").

However, according to Item 1 of Executive Order of the President of the Russian Federation No. 275 of 18 April 2020 "On Recognition of Certain Documents of Citizens of the Russian Federation" (hereinafter – the Executive Order), a Russian national driver's license, which has expired or will expire within the period from 1 February to 15 July 2020 (inclusive of both dates) is recognized valid until the moment determined in accordance with Item 3 of the Executive Order.

Therefore, the actions of a driver operating the vehicle within the above period with a driver's license that expired on the dates indicated in Item 1 of the Executive Order do not constitute the objective side of the administrative offense stipulated in Part 1 of Article 12.7 of the CAO RF.

Where administrative offenses stipulated, for example, in Part 3 of Article 12.7, Parts 1, 3 of Article 12.8, Parts 1, 2 of Article 12.26, Article 12.32 of the CAO RF are discovered, the issue of whether a person is authorised to operate a vehicle should be resolved in a similar way.

ANNEX

Translation of applicable articles
of the Code of the Russian Federation on Administrative Offences (CAO RF)
and of the Criminal Code of the Russian Federation (CrC RF)

CAO RF

Article 6.3. Violation of Legislation Ensuring the Sanitary and Epidemiological Well-Being of the Population

1. Violation of legislation ensuring the sanitary and epidemiological well-being of the population in the form of violation of effective sanitary rules and hygienic standards, failure to comply with sanitary-hygienic measures and epidemic countermeasures, -
is punished by a warning or an administrative fine in the amount of 100 to 500 rubles for citizens; 500 to 1000 rubles for officials; administrative fine in the amount of 500 to 1000 rubles or administrative halt of activities for a term up to 90 days for persons engaged in entrepreneurial activities without forming a legal person; 10 000 to 20 000 rubles or administrative halt of activities for a term up to 90 days for legal persons.

2. The same actions (failure to act) performed during an emergency situation regime, or in case of danger of spread of a disease posing a danger to the public, or during implementation of restrictive measures (quarantine) on the corresponding territory, or failure to carry out, within the stipulated term, a lawful instruction (decree) or request issued by the body (official) in charge of federal state sanitary and epidemiological supervision, regarding the implementation of sanitary-epidemiological (preventive) measures -
are punished by an administrative fine in the amount of 15 000 to 40 000 rubles for citizens; 50 000 to 150 000 rubles for officials; administrative fine in the amount of 50 000 to 150 000 rubles or administrative halt of activities for a term up to 90 days for persons engaged in entrepreneurial activities without forming a legal person; 200 000 to 500 000 rubles or administrative halt of activities for a term up to 90 days for legal persons.

3. Actions (failure to act) stipulated in Part 2 of this Article, where they entail harm to the health of a person or death of a person, unless these actions (failure to act) contain a criminal offence, -
are punished by an administrative fine in the amount of 150 000 to 300 000 rubles for citizens; 300 000 to 500 000 rubles or disqualification for a term of 1 to 3 years for

officials; administrative fine in the amount of 500 000 to 1 000 000 rubles or administrative halt of activities for a term up to 90 days for persons engaged in entrepreneurial activities without forming a legal person; 500 000 to 1 000 000 rubles or administrative halt of activities for a term up to 90 days for legal persons.

Article 12.7. Operating a Transport Vehicle by a Driver Not Authorised to Operate the Transport Vehicle

1. Operating a transport vehicle by a driver not authorised to operate the vehicle (except for learner driving), -
is punished by an administrative fine in the amount of 5 000 to 15 000 rubles.

2. Operating a transport vehicle by a driver, who has been deprived of the right to operate transport vehicles, -
is punished by an administrative fine in the amount of 30 000 rubles, or by administrative arrest for a term up to 15 days, or by obligatory works for a term of 100 to 200 hours.

3. Transfer of operation of a transport vehicle to a person, knowingly unauthorised to operate a transport vehicle (except for learner driving) or deprived of such a right, -
is punished by an administrative fine in the amount of 30 000 rubles.

Article 20.6. Failure to Comply with Norms and Rules Aimed at Prevention and Liquidation of Emergencies

1. Failure to fulfil duties to protect the population and territories from natural or human-made emergencies, as stipulated in legislation, as well as failure to comply with the requirements of norms and rules aimed at prevention of accidents and catastrophes at facilities intended for industrial or social purposes, -
is punished by an administrative fine in the amount of 10 000 to 20 000 rubles for officials; 100 000 to 200 000 rubles for legal persons.

2. Failure to take measures to ensure the readiness of forces and means intended for liquidation of emergencies, as well as failure to timely forward forces and means to the emergency situation zone, as envisaged by a plan for liquidation of emergencies adopted in the stipulated manner, -

is punished by an administrative fine in the amount of 10 000 to 20 000 rubles for officials.

Article 20.6.1. Failure to Comply with Rules of Conduct in an Emergency or During Threat of Its Occurrence

1. Failure to comply with rules of conduct when a high alert regime is introduced on a territory where there is a danger of occurrence of an emergency, or in an emergency situation zone, except when Part 2 of Article 6.3 of this Code applies, -
is punished by a warning or an administrative fine in the amount of 1 000 to 30 000 rubles for citizens; 10 000 to 50 000 rubles for officials; 30 000 to 50 000 rubles for persons engaged in entrepreneurial activities without forming a legal person; 100 000 to 300 000 rubles for legal persons.

2. Actions (failure to act) stipulated in Part 1 of this Article, where they entail harm to the health of a person or to property, except where Part 3 of Article 6.3 of this Code applies, unless these actions (failure to act) contain a criminal offence, or repeated perpetration of an administrative offence stipulated in Part 1 of this Article -
are punished by an administrative fine in the amount of 15 000 to 50 000 rubles for citizens; 300 000 to 500 000 rubles or disqualification for a term of 1 to 3 years for officials; administrative fine in the amount of 500 000 to 1 000 000 rubles or administrative halt of activities for a term up to 90 days for persons engaged in entrepreneurial activities without forming a legal person; 500 000 to 1 000 000 rubles or administrative halt of activities for a term up to 90 days for legal persons.

CrC RF

Article 207.1. Public Dissemination of Knowingly False Information about Circumstances Posing a Threat to the Life and Safety of Citizens

Public dissemination, under the guise of veracious messages, of knowingly false information about circumstances posing a threat to the life and safety of citizens, and (or) on measures taken to ensure the safety of population and territories, on methods and ways of protection against said circumstances -
is punished by a fine in the amount of 300 000 to 700 000 rubles or in the amount of salary or other income of the convicted person for a term of 1 year to 18 months, or by obligatory works for a term up to 360 hours, or by corrective works for a term up to 1 year, or by restriction of liberty for a term up to 3 years.

Note:
In this Article, circumstances posing a threat to the life and safety of citizens are natural and human-made emergencies, ecological emergencies, including epidemics, epizootics and other circumstances arising as a result of accidents, dangerous natural phenomena, catastrophes, natural and other disasters that entail (may entail) human casualties, harm to the health of people and to the environment, significant material losses and disturbance of living conditions of the population.

Article 207.2. Public Dissemination of Knowingly False Publicly Significant Information Entailing Grave Consequences

1. Public dissemination, under the guise of veracious messages, of knowingly false publicly significant information, where this entails harm to health of a person through negligence -
is punished by a fine in the amount of 700 000 to 1 500 000 rubles or in the amount of salary or other income of the convicted person for a term up to 18 months, or by corrective works for a term up to 1 year, or by compulsory labour for a term up to 3 years, or by deprivation of liberty for the same term.

2. The same act, where it entails, through negligence, death of a person or other grave consequences, -
is punished by a fine in the amount of 1 500 000 to 2 000 000 rubles or in the amount of salary or other income of the convicted person for a term of 18 months to 3 years,

or by corrective works for a term up to 2 years, or by compulsory labour for a term up to 5 years, or by deprivation of liberty for the same term.

Article 236. Violation of Sanitary and Epidemiological Rules

1. Violation of sanitary and epidemiological rules, where this entails, through negligence, mass contagion or poisoning of people, or creates a danger of such consequences, -
is punished by a fine in the amount of 500 000 to 700 000 rubles or in the amount of salary or other income of the convicted person for a term of 1 year to 18 months, or by deprivation of right to hold a certain office or engage in certain activities for a term of 1 to 3 years, or by restriction of liberty for a term up to 2 years, or by compulsory labour for a term up to 2 years, or by deprivation of liberty for the same term.

2. Violation of sanitary and epidemiological rules, where this entails, through negligence, death of a person, -
is punished by a fine in the amount of 1 000 000 to 2 000 000 rubles or in the amount of salary or other income of the convicted person for a term of 1 to 3 years, or by restriction of liberty for a term of 2 to 4 years, or by compulsory labour for a term of 3 to 5 years, or by deprivation of liberty for the same term.

3. Violation of sanitary and epidemiological rules, where this entails, through negligence, death of two or more persons, -
is punished by compulsory labour for a term of 4 to 5 years or by deprivation of liberty for a term of 5 to 7 years.

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