

IS COVID-19 AN EVENT OF “FORCE MAJEURE” UNDER GREEK LAW?

Athens, April 2, 2020.

As a matter of legal principle, the term “force majeure” refers to excessive situations which either cannot be reversed by human capacities or may possibly be redressed but with more difficulty than other unforeseeable situations (Supreme Court 513/2016).

Although there is no ad hoc case law in Greece regarding an epidemic as a force majeure event indications can be found in older legal literature (a “plague of cholera” as an example of force majeure in K. Simantiras ‘General Principles of Civil Law) or as dicta in court decisions (see CA of Larisa 185/2018 where an “epidemic disease” is included among other facts/events that may constitute a force majeure).

Moreover, the idea of an epidemic disease to be considered as a force majeure incident is not something unknown to the Greek legal system as Article 1 of law 2079/1952 incorporated into the Greek legal system, the Forced Labour Convention of Geneva 1930 (No. 29) which in its article 2 par. 2 subpar. (d) includes among the “force majeure” incidents a “violent epidemic”.

In any case, COVID-19 crisis seems to have the characteristics of “excessive” and of something beyond the “human capacities” and depending on each case, “unforeseeable” too. The pandemic of COVID-19 may be deemed to constitute a force majeure situation either directly or indirectly. More specifically the infection by the virus itself may constitute directly a force majeure situation for an individual, given the various aspects of the ease of contagion, the number of days that somebody may be hospitalized and the quarantine which may be imposed on him. In Greek case-law one of the common grounds of force majeure is the “unexpected illness” of a person or of its sole attorney (see indicatively SC 1119/2017), which has as a result the non-performance of his obligations under a contract or his inability to be represented in a court hearing. It will therefore have to be examined on a case per case basis whether the infection by COVID-19 was “unexpected”.

Furthermore, the pandemic may constitute a force majeure situation indirectly i.e. by the adoption of several measures by the State such as travel prohibitions, quarantine, temporary closure by ministerial decisions of many businesses, such as hotels, restaurants, retail shops etc. (e.g. in art. 1 par. 1 of the ministerial decision 12998/232/28.03.2020 it is expressly mentioned that the temporary closure of the same businesses by a State decision constitutes force majeure regarding the employment contracts). Such measures may affect the performance of a wide range of contractual relations and in some cases, it is highly likely that the COVID-19 crisis will be considered as a force majeure situation.

Characterizing COVID-19 crisis as a force majeure event may have various legal consequences such as e.g. to release a debtor from his liability for damages due to negligence according to art. 330 of the Civil Code or to allow a litigant to avoid the negative impacts of failing with a procedural deadline or time-limit (see art. 152 et seq of the Code of Civil Procedure) or to give the right to a party not to perform or to ask the modification of a contract according to art. 388 of the Civil Code.

Having said the above, it is important to note that, at least in Greece, many aspects related to the consequences of the coronavirus have been directly dealt by the legislator at the same time the legislative measures regulating this period were enacted. In such cases such as for example (i) the employer/employee relation, (ii) procedural deadlines and (iii) the time-bar of claims that are directly regulated by the Law there is no need to examine whether the crisis constitutes “force majeure” or not as the provisions of the recent Laws will apply directly.

Achilleas Christodoulou, Associate

The present has been published in the collective paper of the International Lawyers Network (ILN): "Force Majeure- Does the current corona crisis constitute a (global) force majeure from a legal point of view?", available here: <https://files.constantcontact.com/91ea59f7701/13db060b-89c0-4561-ba2e-f1dd17ee752b.pdf>