

# Insolvency Proceedings in Post-Pandemic Period, Through the Governance Sustainability Prism.

By Valdis Savickis<sup>1</sup>

## ABSTRACT.

Nevertheless, COVID-19 Pandemic situation calm down in Latvia and in whole world, diffracted, common legal order and procedural norms came back in so called “normal functioning”. Authors aim is to examine the legal regime in post-pandemic period and conclude the impact of specific legal regulation on the procedural and material legal norms. The study uses analytical and descriptive methods, evaluating normative acts and political decisions. Comparative method is used to compare the scope of legal instruments of national level, in the sphere of civil procedures and insolvency proceedings. Historical method is used to compare and analyze legal norms. As a result of the study, author concluded, that: 1) scope of applicable legal instruments used during the emergency situation there not even prolonged, but remained unchanged in legal norms of the special normative acts, regulating suppression of consequences of the spread and management of the spread of COVID-19 Infection; 2) state, in order to reach governance sustainability aims, invented digital and technological solutions, in order to reach the improvement of the economic situation of society and to promote the stability of the national economy.

*Keywords: Insolvency proceedings, civil procedures, business environment, governance sustainability, legal entities.*

## 1. Introduction

According to the 05 May 2023, statement of the Director-General of the UN World Health Organization (WHO) an end to COVID-19 as a public health emergency was declared. Although, this declaration was made “with great hope”, and Tedros Adhanom Ghebreyesus stressed that it does not mean the disease is no longer a global threat (UN WHO press conference 05 May 2023). Almost three years passed, starting 11 March 2020, when Director-General in his media briefing stated that UN WHO have made the assessment that COVID-19 can be characterized as a pandemic (WHO SITREP-51, 2020). Such a long time period affected not only public health sector, but all spectrum of the international and national economies. Special legal normative regime on national level (Republic of Latvia) was invented in order to suppress the consequences and manage the spread of the pandemic. Author made an initial overview of that situation in section 3.4. of article corresponding the Axiology in Latvia’s Insolvency policy (Savickis, 2020). Retrospectively, two major normative acts there invented during that period:

1. Law on the Management of the Spread of COVID-19 Infection (Management of the Spread of COVID-19, 2020). Normative act prescribed overall procedures and exact timelines in order to restore the general legal order after the end of the specified term of the emergency situation. The aim of that regulation was quite ambitious and divided in

<sup>1</sup>Rīga Stradiņš University, Faculty of Social Sciences. Dzirciema Street 16, Riga, LV-1007, Latvia.

two sub-aims: 1) to ensure the improvement of the economic situation of the society; 2) to promote the stability of the national economy.

2. Law on the Suppression of Consequences of the Spread of COVID-19 Infection (Suppression of Consequences of the Spread of COVID-19, 2020). Normative act prescribed operational rules and procedures, with the same reachable goal, as mentioned above - to restore the general legal order after the end of the time limit for emergency situation. At the same time setting appropriate measures for ensuring such scope of rights and obligations of private individuals which would be commensurate with public health and safety interests and effective operation of the State and local government authorities (Savickis, 2020).

Major digitalisation processes there launched or switched on, from sleep mode. And the trigger was the pandemic situation, inability of persons (either natural, either legal) and the public administration to perform usual tasks in a way and methods, as it was before. Author, inspired by the professor Stephen Hawking statement: “*Computers will overtake humans with AI at some point within the next 100 years. When that happens, we need to make sure the computers have goals aligned with ours. Our future is a race between the growing power of technology and the wisdom with which we use it*” (Hawking, 2015), is carrying out research and analysis of the insolvency proceedings, paying attention also to the specifics of the digitalisation of the civil proceedings in post-pandemic period. This digitalisation issue will not be the one of the major issues of the article, but corresponding line, due to the synergy of the one of the branches (dimension) of the governance sustainability.

## 2. Materials and methods

### 2.1. Structure of Article.

The article is structured and based on the analysis of laws and regulations, documents of international organizations and conclusions drawn by academics/specialists in the field of insolvency and civil law. Corresponding to the research aim - to examine the legal regime in post-pandemic period and conclude the impact of specific legal regulation on the procedural and material legal norms, article will address topical study of the above mentioned two major segments. Direction of the National Development Plan of Latvia for 2021–2027: *Rule of law and governance* is taken as the basis to conduct the study. The reachable goal of that direction is: Together, the people of Latvia and public authorities create a better society and good governance. People enact their legal rights, and the public administration in all branches of power has become more professional - open, modern, effective and efficient. There is increased satisfaction with the state and trust in the public administration, as well as the judicial and law enforcement systems. Services are personalized, and public interests are balanced. Digitalisation and coordinated action across sectors is key (NDP 2021 – 2027), corresponds to topical analysis and the prism (governance sustainability), defined in the title of this article.

The following political planning documents are used in the study: Latvia 2030, Development Plan 2021 - 2027. The following significant legislative acts are used in the study: Insolvency Law, Civil Procedure Law. National level document analysis, as well analysis of documents of the international institutions, such as United Nations World Health Organization and others were incorporated in the article.

## 2.2. Methods used in the article.

General scientific methods: Descriptive – by identifying the key terms and definitions of the study. Analytical – by studying political planning documents, laws and regulations, opinions of specialists in the field of civil law, insolvency law and civil proceeding law - to identify problems in the context of the matters examined in the study from different perspectives. Dogmatic – by conducting a comprehensive analysis of the legal framework that defines development areas of Latvia, set by the policy planning documents, insolvency proceedings and their impact on the above mentioned in post pandemic period. Induction and deduction – to emphasize the approbations of the will of legislator, expressed in the different level of political planning documents, in laws and regulations. As well to figure out the compliances and incompliances with the statements and declarations, recommendations, and course of actions, expressed by the international organizations, legislative and executive powers. The methods of interpretation of legal norms have been also applied in the article. Grammatical – by examining the meaning and substance of the notions included in legal norms and texts, assessing legal norms from the grammatical aspect. Systematic – by examining direction and reachable goals, set in the policy planning documents, laws and Cabinet orders. Teleological – by examining the intention of the legislator when adopting laws and regulations in relation to beforementioned, also in correlation with objectives aiming governance sustainability, set by the different level of political planning documents.

## 3. Discussion

### 3.1. New plan – new vision?

As the new planning period has come, Parliament of the Republic of Latvia by its decision No. 418/Lm13 on 2 July 2020 approved National Development Plan of Latvia for 2021–2027. In the terms of the Section 8 of the Development Planning System Law, this plan is characterized, as the medium-term planning document, with validity up to seven years. Author paid increased attention to this document, because of its significant role in the development planning process. NDP 2021-2027 corresponds with governance sustainability issue, as well as indicates specific goal, emphasized in the section 2.1. of this article. Nevertheless - sub-goals of the beforementioned goal, addressed to synergy of individuals, society (civil society) and the state (public administration). It is important to indicate essence of these three sub-goals, that stated the next:

3. The rule of law and good governance are essential aspects of democracy;
4. The ability of the individual to exercise and protect their own rights, together with and independent and effective judicial and law enforcement system, increases public awareness of the rule of law;
5. People participate in and influence governance processes, can trust policy makers and are actively involved in civil society;
6. Public administration and society are not juxtaposed, but cooperate to achieve agreed goals in the environmental, social, and economic dimensions of development (NDP 2021-2027).

Using inductive/deductive methodology, key features of the new action plan are the next: rule of law, governance of good manner, not having a right, but ability to exercise it, civil society role, public administration “in cooperation mode”.

In order to reach such an ambitious goals, authors of the plan, propose an invention of so-called measures, there responsible authorities (ministries, public administration and etc.) in cooperation with co-responsible authorities (the same bodies plus NGO`s, confederations and etc.) must reach indicators (satisfaction, indexes and etc.). Author, to reach the aim of this article, uses measure No. 429 of the NDP 2021-2027, that states: Ensuring that the judicial and law enforcement system becomes more efficient, convenient, easy to access and understand. Strengthening capacity, improving cooperation, simplifying legal processes (through cooperation between institutions - digitally, in coordination platforms, exchange of best practice, joint training, research and expertise). Introducing innovative, results-oriented and cost-effective solutions in all pre-trial investigation institutions, courts and out-of-court dispute resolution institutions (NDP 2021-2027). This measure provides clear and visible link of the judicial system and simplifying of the legal processes, through its digitalisation, research and expertise.

The digital bottom line of the judicial and law enforcement systems was e-platform called e.Lieta (e-Case). State organized and managed platform, there case data and materials, submission of documents to the Prosecutor's Office, Courts, Probation Service are available and usable. Normative regulation and normative acts, regulating the amount of e-Case data to be processed, personal identification conditions, data storage rules and data processing procedures necessary to ensure the e-case platform there adopted in early Spring 2022. Legal frame for the platform was provided by Law on the state platform for processes in the electronic environment (2022) adopted 10 March 2022, but cabinet regulation – e-Case platform data processing rules (2022), issued with accordance with aforementioned law, was adopted 05 April 2022. e-Case platform also corresponds to the insolvency proceedings and specifically to the insolvency proceedings case materials, as well essential stage of the insolvency proceedings - submitting an application for insolvency proceedings (of a legal person). More detailed cross reference of e-Case platform system and submission/application for insolvency proceedings author will provide in the next sub-section of an article.

### **3.2. Legal regime in post-pandemic period.**

In introduction, author noted, that only on 05 May 2023 an end to COVID-19 as a public health emergency was declared worldwide. On national level government of the Republic of Latvia almost one year before the declaration of the UN WHO, on 01 March 2022 proclaimed the end of validity of the Cabinet Order No. 720 (Adopted 9 October 2021) Regarding Declaration of the Emergency Situation (this order of year 2021 was continuation of the order, issued on year 2020 - Cabinet Order No.103). With this moment emergency situation (as the prerogative of the government, according to the Law “On Emergency Situation and State of Exception” sections 4.-6.) in the territory of the Republic of Latvia was cancelled. According to the norms of the above-mentioned law, special legal regime, during which the government used the right to restrict the rights and freedoms of State administration, as well, as the local government authorities' restrictions significantly influenced natural persons and legal persons, additional duties there imposed to them.

Using any of the methods of interpretation of legal norms, can be concluded, that full spectrum of the section 4 of the normative act was used and implemented (On Emergency Situation and State of Exception).

Both special normative acts (Law on the Management of the Spread of COVID-19 Infection and Law on the Suppression of Consequences of the Spread of COVID-19 Infection), adopted in year 2020, remain in force, notwithstanding the cancellation of the emergency situation. Legal norms of the beforementioned normative acts affected both – substantive and procedural rules, determining insolvency proceedings. Regulation was introduced and remained in force, followed by:

- An application for legal protection proceedings, insolvency proceedings of a legal person, and insolvency proceedings of a natural person may be submitted electronically by signing it in compliance with the requirements of Section 3 of the Electronic Documents Law;

- In the cases specified in the Civil Procedure Law, only the recipient shall make an entry on the receipt of an electronically submitted application in the register of the relevant application (Law on the Management of the Spread of COVID-19 Infection (2020)).

Legal order was changed dramatically - Civil Procedure Law, before the amendments, specified, that application for insolvency proceedings of a legal person must be submitted in person (or on the basis on special power of attorney) and shall be filed in the form of a paper form. In addition, the law stipulated that, an application for insolvency proceedings must be registered in a separate register, in which the applicant and the recipient of the application must sign (in the form of a paper form). Following the regulation of rules of special law, Civil Procedure Law was amended accordingly, and new regulation invented, followed by:

- An application for insolvency proceedings shall be filed in the form of a paper form or on an online system (online system – means an e-Case platform);

- If an application for insolvency proceedings is received on an online system, the record shall be entered in the register of records by the recipient (Civil Procedure Law).

The importance of the bankruptcy (insolvency), as procedural order, was accentuated also by specialists in the field of insolvency specialists in the field of insolvency, author corresponds to Philip R. Wood, who stated, that bankruptcy has often been treated as procedural subject (Wood, 2019).

State, parallel to invention of alternative way (electronically, either by e-mail, or using online system) to apply for insolvency proceedings, remained in force the paper form.

Such procedural changes affected all parties (debtor, creditors, procedural bodies – court and insolvency practitioner), involved in the insolvency proceedings. Breakdown of the parties involved, author uses according to proposal made by Reinhard Bork (Bork, 2020).

Another implicit regulatory framework was invented by the activation of official electronic address. Activation at this point means mandatory use of an official electronic address for a legal entity registered in the registers (Law on the Official Electronic Address). Regulation, affecting registration and usage of the official electronic address, was followed by: For legal entities registered in the records, the official electronic address

account shall be activated from 1 January 2019 to 31 December 2022, and regulation, stated, that mandatory use of an official electronic address shall apply as of 1 January 2023. A legal entity registered in the registers, if it has an activated electronic address account, shall be contacted using electronic means, and an electronic document shall be sent using the official electronic address (Law on the Official Electronic Address). This new regulation was made in correlation with the substantive rules of the Insolvency law, there communication between the parties, involved in the Insolvency proceedings must be made electronically, using Electronic insolvency accounting system, by e-mail, using documents, signed in compliance with the requirements of Section 3 of the Electronic Documents Law. Author came to such conclusion also in early Spring 2023 (Savickis, V. Kudeikina, I. (2023). Such digitalisation of the Insolvency proceedings, as well as the Civil proceedings, at the initiating stage - application for insolvency proceedings, provided comprehensive ground for the whole spectrum of activities, during insolvency proceedings (of legal entities).

All the beforementioned activities clearly corresponds with the World Bank document, governing Principles for effective insolvency and creditor/debtor regimes. In the section, concerning Transparency and corporate governance, such principle stated the next: Minimum standards of transparency and corporate governance should be established to foster communication and cooperation (IBRD (2016). Communication, under the digitalisation concept and cooperation, in the means of transparent decisions and solutions of the procedural bodies – court and insolvency practitioner, become more essential, than ever.

On the European Union level – activities in the sphere of digitalisation of the insolvency proceedings and increased use of electronic means of communication, corresponds to the Directive on restructuring and insolvency (2019). A complex rule of law consisting of a Point 90 and the Article 28, predicted, that Member States should put in place provisions enabling debtors, creditors, practitioners and judicial and administrative authorities to use electronic means of communication (Directive on restructuring and insolvency (2019)). Such provisions clearly corresponded with the general principles of the insolvency proceedings – principle of quick turnover (Insolvency Law (2010), to reduce the length of procedures.

### **3.3. Insolvency proceedings and governance sustainability**

In this paragraph, on the thesis basis author create a link between these procedural actions and concept of governance sustainability.

Concept of governance sustainability is strongly linked with global concept of sustainable development, there the last is acknowledged as development where reaching today's needs does not threaten the ability of future generations to meet theirs. Development has three dimensions - economic, social and environmental. On the other hand, this perspective was approved on the international level. Roots of the concept of sustainability was presented and defined by the United Nations Organization (UN) in 1987, but in 2015 UN defined 17 sustainable development goals. Resolution adopted by the General Assembly on 25 September 2015, stated, that 17 Sustainable Development Goals and 169 targets which we are announcing today demonstrate the scale and ambition of this new universal Agenda (2030 Agenda for Sustainable Development (2015). On the

European level, such dimension as European Green Deal there invented, that resulted in a strategy for achieving the 2050 climate goal. The general statement, was that Europe's future depends on a healthy planet and EU member states have committed to achieving climate neutrality by 2050, fulfilling their obligations under the Paris Agreement (European Green Deal (2019)). The roots of this strategy there searchable, when the Commission launched the European Green Deal in December 2019, and the European Council mentioned it at its December 12-13 meeting (European Council conclusions (2019)).

So far, it is hardly to understand and catch the borderline between these two concepts, but author, considering beforementioned points in discussion will draw correlations and indicate mutual connections between them. Firstly – environment, as one of the dimensions, there goal No.13 of the European Green Deal stated the next - Take urgent action to combat climate change and its impacts (European Green Deal, 2019). Through the prism of digitalization of the insolvency proceedings, incl. document turnover in between of all the parties, involved in procedures, hard copies documents circulation was either minimised or abolished at all. Secondly – issue of the public administration, as a significant part and segment of the governance sustainability sub-aims is covered by very active usage of two electronic platforms: e-Case platform and Electronic insolvency accounting system. This proactive activity of public administration is covering data processing, communication in between parties, involved in insolvency proceedings, and state administrative institutions. Such an activity is corresponding with the national level reachable sub-goal - public administration “in cooperation mode”, and on European level goal No.16 of the European Green Deal, that stated the next - Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels (European Green Deal, 2019).

#### **4. Results and conclusion**

As a result of the research, the author has come to the conclusion, that:

- complex scope of applicable legal instruments used during the emergency situation in the territory of the Republic of Latvia there not even prolonged, but remained unchanged in legal norms of the special normative acts, regulating suppression of consequences of the spread and management of the spread of COVID-19 Infection. In this short-term period, up to three years (year 2023 was the roots of this article), it is rather hard to examine and create discussion on practical implications of this normative regime. Author ambition is to continue research with more detailed examination of these inventions in law and the insolvency proceedings in practice in medium-term period (up to seven years) and present the result accordingly.

- state, in order to reach governance sustainability aims, invented digital and technological solutions, in order to reach the improvement of the economic situation of society and to promote the stability of the national economy, governance and rule of law. This dimension of the sustainability -economy (as well, as economic situation of the society in whole) will prevail in future authors future research, with the aim to link it with governance sustainability, which not only reflects entrepreneurs' business responsibility, but also affects everyday life of society.

Invention of the specific legal regulation during period of pandemic, as well, as after it - provided more flexible and achievable instrument of business termination solution – insolvency.

Official communication between parties, involved in insolvency proceedings, reached next level of exchange of electronical documents, either by means of private e-mail providers, either by state managed official electronic address and in the end of the day, using e-Case platform. Dramatic decrease of paper resources is ascertainable. On this stage, segment of environmental dimension of the sustainability is taking place. Author concludes and there is the ground for the possible research lines, there bottom line is, that sustainable companies (also state governing institutions) not only take care of environmental protection, but also pay attention to social aspects and governance sustainability. And the insolvency proceeding of legal entities on any stages of realisation of them is the illustrative example.

Authors concern, made under the statement of the professor Hawking, remain in force, because of dual legal regime of application for the for-insolvency proceedings. In the case of using electronical/digital matters, the positive identification of the applicant (or an authorised person) became an optional procedure, comparatively to pre-pandemic situation, there registration of an application for insolvency proceedings, predicted signatures of the applicant and the recipient of the application (under imperative legal provision of the Civil Procedure Law). On one side, we are speedily reaching goals and aims of the sustainability issues and let`s be honest – this is not the task of the insolvency process in general. But form other side, some major points were left behind the scenes, and corresponding to the deeper research in a medium-term period, answers to these questions will be in the agenda of the legislator, and subordinately also a scientist, including the author.

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