



Significance of Law N° 21.379

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Modifies and Complements Law N° 21.226 so as to reactivate and provide continuity to the judicial system, after the state of constitutional exception and catastrophe due to public calamity, was lifted.

PRIOR BACKGROUND DATA

Law N° 21.226, which came into force on April 2, 2020, (see Bulletin corresponding to the month of April, 2020), established an exceptional judicial regime in answer to the COVID-19 pandemic in Chile. For example, the interruption of the time bar for civil actions, and the time bars for labour suits, among others, were modified. Said law was conceived to be in effect while the state of constitutional exception was in force, which finally ended on September 30, 2021.

For this same reason, on September 30, 2021, Law N° 21.379 that modifies and complements Law N° 21226 came into force. Its purpose is to provide continuity to the judicial service, extending the judicial regime established by the previous law for a reasonable and delimited period of time. .

In the following paragraphs we shall mainly address the treatment provided by this law regarding two subjects of interest for processing civil trials for compensation: the **discovery periods**¹ and the **abandonment of the procedure**², making a comparison between the situation prior to the issuance of Law N° 21.226, which was valid during the state of constitutional exception, and the one that is currently valid, after the publication of Law N° 21.379.

TREATMENT OF DISCOVERY PERIODS

1. **Situation prior to Law N° 21.226.** Under normal conditions and within the framework of ordinary proceedings, under which the majority of judicial claims for extracontractual liability are processed, the discovery period begins as from the last notification of the resolution that admits the case for evidence (commonly known as the “order to produce evidence”). The

¹ Final time limit granted by the law so that the parties may perform any discovery proceedings that have not been performed before, and within which proof of witnesses must necessarily be presented.

² Procedural penalization that takes place when all the parties to a trial have ceased their prosecution for at least six months, taken as from the last resolution related to a procedure that is useful for processing the proceedings.

above is without prejudice to the presentation of appeals for modifying, adding or eliminating points of proof.

2. **Situation during the validity of the state of constitutional exception.** Article 6 of Law N° 21.226 (now annulled) established that the discovery periods which had commenced prior to the inception date of said law, or which commenced during the validity of the state of constitutional exception, would be suspended until the expiry of the ten working days subsequent to the end of the state of exception. That is to say, that the law itself contemplated a specific date at the end of the state of exception upon which discovery periods would resume or would begin.
3. **Current situation after Law N° 21.379.** So as to avoid a collapse in processing the discovery periods, it was established that these would no longer resume automatically, but would require a petition from either of the parties in this regard. That is to say that, in order to resume a discovery period that was suspended in accordance with Law N° 21.226, one of the parties should request it and the court should accept it by issuing a ruling; the legal notification thereof would be considered as the resumption of the discovery period. We would like to emphasize that the above is only applicable to those trials wherein the discovery period is suspended, not to those where said period has not yet begun.

ABANDONMENT OF PROCEDURE

1. **Situation prior to Law N° 21.226.** When the activities that move cases forward³ have fallen to the parties, and these stop the pursuit thereof during six months⁴, defendants can request the court to declare the abandonment of the procedure. If this petition is admitted by the court, the trial is concluded. However, this does not involve the extinction of the actions and exceptions of the parties.
2. **Situation during the validity of the state of constitutional exception.** Although Law N° 21.226 did not modify regulations regarding the abandonment of procedure, during the state of constitutional exception interpretation difficulties arose regarding its application. At the level of inferior courts (first instance) we found a disparity of criteria, with a significant tendency towards rejecting abandonment even though requirements to declare it were met. However, higher courts were stricter in applying it.⁵
3. **Current situation after Law N° 21.379.** The new law clarifies that, for purposes of abandonment of procedure, the period of time that the trial has been suspended for any of

³ Understood as the activities that move the trial towards a ruling.

⁴ Taken as from the last resolution issued regarding a useful procedure. In general, “useful procedure” is understood as any presentation the purpose of which is to carry out any formality regarding the trial that serves to move the proceedings towards a final sentence.

⁵ We quote as an example, sentence dated July 9, 2021 identified with Case File N° 22.173-2021, wherein the Supreme Court maintained that “...suspension mentioned in Law N° 21.226 refers to the discovery periods that arise and/or continue during the state of sanitary emergency, but not to the procedural load that rests upon the plaintiff of requesting notifications of resolutions that are issued during the proceedings, specifically to expedite the prosecution of whoever is interested in the results. To not do this, in an attempt to be covered by the interruption of other procedural stages, is incompatible with the duty of collaborating with the progress of same, so that, as was resolved by the judges on points of law, the incident of the abandonment of procedure should be admitted”.

the following two reasons: (i) provision of Law N° 21.226 or (ii) any other cause related to the pandemic, shall not be taken into account.

Regarding the first hypothesis, that is to say, not taking into account the time that the trial would have been suspended according to what is set out in Law N° 21.226 (old Article 6), we consider that the following are relevant:

- a. It is logical that said time should not be considered when counting the six-month period required by law, because abandonment of procedure is a penalty imposed on a negligent litigant that has not pressed for the normal continuation of a trial. Said negligence is not seen here, because if the trial has not moved forward it is because the law ordered it so, and not because of the passiveness of one of the litigants;
- b. The period of time that will not be taken into account for declaring abandonment is the period in which the discovery period was suspended due to the old Law N° 21.226 (old Article 6) and not because the interested party did not request its resumption, as is currently required; and,
- c. Finally, it should be clarified that in spite of the ending of the state of constitutional exception, the discovery period will continue to be suspended until there are no petitions for resumption made by litigating parties nor resolutions from the court admitting them.

Regarding the second hypothesis (“*any other cause related to the pandemic*”), the wording used seems quite broad, which will probably give rise to an enormous variety of allegations with the purpose of avoiding the abandonment of proceedings, some of them barely related to the pandemic, thereby generating a confusing scenario as regards the resolution of these incidents.