

## The Law in the Face of the COVID-19 Pandemic: Early Lessons from Uruguay

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**Abstract:** The Corona crisis is one of the crises that has engulfed the world and Uruguay and has marked all human beings' death and life. This crisis has many legal, political, social, and economic dimensions and has and will have different consequences in this area. So far in the last two centuries, twelve major epidemics of infectious diseases and fifteen famines, and severe droughts have engulfed our world, but this crisis is "of a different kind." It has been less critical to cover the whole world. Infect millions of people, create new words in cultures, and announce major changes in international relations, politics, law, and the world and country economies. No geographical point is safe from this, and it has a serious impact on human relations. This paper is aimed to study the Uruguayan legal system in the post-Covid-19 world. In this paper, Constitutional, Financial, commercial, Labor, Public, and judicial law is discussed in the light of the Covid-19, and its impacts and strategies to mitigate those impacts are mentioned.

**Keywords:** COVID-19; Commercial Law; Financial Law; Judicial Law; Labor Law; Legal System; Public law

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### 1. Introduction

The rapid spread of COVID-19 and the serious threat to the virus's human life have caused great concern internationally and governments. The virus's outbreak has jeopardized governments' fundamental interests and forced them to take several specific measures.<sup>1</sup> Unfortunately, there is currently no single way to combat the disease and the spread of the virus, and the only viable way is to control the virus and reduce its prevalence through social isolation, quarantine of infected people, or others due to its transmissibility. People are affected. The important point about this virus, which forces states to take certain restrictive measures, is that some people may be carriers of the virus even without symptoms. Due to the lack of access to vaccines or definitive treatment of this virus, restrictive measures such as quarantine, ban or restriction of freedom of movement, ban on the accumulation and closure of commercial and economic centers and organizations for government, government, and private institutions in government and private institutions, and reduce the effects of this virus.<sup>2</sup>

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<sup>1</sup> Alconada Mon, H. (2020). Coronavirus. Martha Nussbaum: "Esta pandemia es una gran oportunidad para abrir nuestras vidas a las realidades de otros".

<sup>2</sup> Información estadística actualizada a diario de la Johns Hopkins University

The spread of the virus is so severe that the continued operation of many service centers has caused serious problems and much of governments' ability to take specific measures, including protecting individuals' lives and health through the provision of public health services.<sup>3</sup> Focusing people and facilitating access to it is focused on people with severe symptoms and reducing the virus's effects by controlling its prevalence. Governments' actions to distance themselves, quarantine, isolate, and restrict travel, in addition to the deadly effects of the virus, have significant personal and human costs and have a far-reaching impact on the global economy, supply chains, and other trade relations. It has influenced governments from domestic and international regulations.<sup>4</sup>

A new Law Review is presented in this paper, with a new perspective that addresses important aspects of COVID-19 in different law areas. The situation caused by the coronavirus showed and demonstrated aspects that deal with many areas: health, health care, economic aspects, psychological approaches, new work modalities, different protocols, among many others. It also highlighted the importance of scientific research in all these areas, the law not being alien to it. In recent days and the middle of this pandemic, we have seen the most varied analyzes of its effect on the law, from the consequences of the extraordinary judicial fair, the suspension of terms, the guarantees; but also, the limits to freedoms, the protection of personal and sensitive data, the implications of teleworking for Labor Law, and, especially, the consequences that this pandemic may have for companies, for families, in violence or for employees. Likewise, the governments adopted different economic and fiscal measures to face the financial consequences of this situation. The Law Review and this paper's commitment to research in law aim to investigate this particular situation and the impact of this pandemic on the various areas of law. The results show the different perspectives that lead to a joint reflection: the law is not alien to this pandemic, and the investigation of these different consequences is more than necessary.

## 2. COVID-19 and Constitutional Law

In a regulation mainly from 1830, the Uruguayan Constitution provides for three situations that can allow the exercise of emergency powers: serious and unforeseen cases of external attack or internal commotion, the extraordinary case of treason or conspiracy against the homeland and the state, and the war. Likewise, the Charter provides the emergency powers that may be exercised for these special situations. It is not the usual solution in comparative law in which the notion of emergency or urgency is usually included, more broadly.

The preceding could be a problem for Uruguay since if the pandemic does not constitute a serious and unforeseen internal commotion, no emergency power could be exercised. The issue is not serious since legal regulations allow the issue to be overcome without resorting to the exercise of emergency powers in constitutional terms. People's physical

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<sup>3</sup> Lepelletier, D., Grandbastien, B., Romano-Bertrand, S., Aho, S., Chidiac, C., Géhanno, J. F., & Chauvin, F. (2020). What face mask for what use in the context of the COVID-19 pandemic? The French guidelines. *Journal of Hospital Infection*, 105(3), 414-418.

<sup>4</sup> Pan American Health Organization. Available online at: <https://www.paho.org/es/tag/enfermedad-por-coronavirus-COVID-19>.

freedom can be limited, in normal situations, in two cases: a) criminal and b) security reasons. Regarding the first case, the Constitution provides that a subject can be arrested in flagrante delicto or with partial evidence and order of the competent judge, or a Judge can order the arrest or preventive detention of an accused or can be before the figure of the convicted person by final judgment. In no other case, for criminal reasons, may an individual be deprived of liberty during periods of normality. But outside of criminal matters, the deprivation of liberty has only the generic regulation of article 7 of the Constitution regarding the limitation of protection in the enjoyment of liberty. More precise is subsection 3 of Article 22 of the American Convention, which provides that freedom of movement may be restricted by law to the extent necessary in a democratic society to prevent criminal offenses or protect public health or rights and freedoms of others. In other words, outside the criminal sphere, by law, freedom of movement may be limited, among other cases, to protect public health.<sup>5</sup>

Another example is that the Uruguayan Ministry of Public Health has, among other tasks, the adoption of all the measures it deems necessary to maintain collective health and their execution by the personnel under its command, issuing all the regulations and provisions necessary for this primary purpose. In the event of an epidemic or serious threats of invasion of infectious-contagious diseases, the Ministry will immediately adopt the measures conducive to keeping the country harmless or reducing the infection's ravages. In the previous case, the Executive Power will order the public force's intervention to guarantee the dictated measures' faithful fulfillment. Besides and when necessary, the Ministry may order the isolation and detention of people who, due to their health conditions, could constitute a collective danger.<sup>6</sup>

Likewise, every inhabitant should submit to the prophylactic or assistance measures imposed on him when his state of health may constitute a public danger. The Ministry of Public Health may impose the complaint and mandatory treatment of conditions that may impact society. It is also foreseen that isolation or confinement may be arranged in a specific establishment or place. The Ministry of Public Health may order the closure of any establishment in the event of a serious infringement of current health regulations. Considering mentioned facts for Uruguay, two dubious issues in the law are noticed. The first refers to the administrative sanctions that may correspond to the regulations' infractions since the law provides fines, but the maximum amount would be \$ 500. Since the fines were adopted in 1934, they are not preventing the Uruguayan currency's devaluation. The most practical would be to update said ceiling by CPI and see how much the fine ceiling would remain. The other would be to pass a one-article law that sets the cap on indexed units.

Another issue, entering a constitutional issue, is the judge's participation as an inescapable guarantee of human rights and communication to relatives and acquaintances of any person whose freedom is limited. Although Law 9.202 does not refer to this, directly applying the Constitution and the American Convention, the regulations of the Executive Power may provide that any restriction of the freedom of a

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<sup>5</sup> "Procesos jurisdiccionales. Utilización de tecnologías de la información y comunicación", C/138/20. Rep. 41.

<sup>6</sup> Law 19,879, April 30 2020.

subject for health reasons, when the limitation is urgent, must be placed in immediate knowledge of a judge and the isolated person must be allowed to communicate the situation to his relatives immediately. Moreover, in restricting freedom of movement for non-criminal reasons, the subject should be allowed to keep in his possession and use his cell phone.

Finally, regarding the possible use of prompt security measures (Article 168, paragraph 17 of the Constitution), it should be noted that these measures proceed in "serious and unforeseen cases" of external attack or internal commotion. The key, and dispensing with other complex aspects, is to determine what "serious" means. Of course, the interpretation cannot be subjective since each one will assess a situation as serious or not serious. On the contrary, this expression refers to a situation that cannot be overcome by the provisions established in the legal order for normality periods (which does not exclude that there may be complex situations). If the authorities can overcome the problem by acting within the Constitution and the law, the situation will not be serious in terms of this numeral 17, and prompt security measures will not proceed. Then that prompt security measures are not appropriate because the legal provisions in the matter of epidemics are sufficient and, if by exception, some legal adjustment is required, the Legislative Power in our times, can pass laws on the day, so it cannot there is a way to find something that is outside the regular legal system nor can recourse to the suspension of individual security (Article 31 of the Constitution) as this is only possible in cases of treason or conspiracy against the homeland and, even adhering to conspiracy theories, this provision could not be considered as applicable to this case of an epidemic. In short, to face the epidemic, even when the intensity of the measures must be increased, there is sufficient support in the legal order to prevent the adoption of prompt security measures.<sup>7</sup>

### 3. COVID-19 and Family Law

Both the pandemic itself and the government's measures (the Prince's actions) made it clear which issues are essential for the people. That is why issues such as food, the family insertion of minors, the communication regime (visits), and gender and domestic violence, among others, marked the substantial agenda of family law and put the laws to the test. Existing institutions. Given the requested brevity, we will highlight in these lines the issue of "food" not only because of its foundation (the right to life and family solidarity) but also because of the need for its effective and prompt fulfillment.

In the particular context that has generated the pandemic and its consequence, the maintenance obligation subjects (debtor and creditor) may have changed drastically [3]. Thus, the debtor may have gone to unemployment insurance (a very common situation at present) or have lost his job. In contrast, the creditor may have obtained a circumstantial job because the job offer requires people with a lower risk of contracting the virus or is simply a beneficiary of one of the emergency plans arranged for the health emergency period.

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<sup>7</sup> Resolution No. 12, Resolution No. 16 and Resolution 17, March 19 2020.

Martha Nussbaum, one of the most recognized thinkers of our time, said: "now we have time to think that we did not expect to have, we must take advantage of it" because this crisis could be "a time of learning and resolution."<sup>8</sup> Along these lines and concerning the issue of "food," which is important due to the number of claims made before the forum, we should consider whether the existing regulations are sufficient and adequate in the face of these emergencies, bearing in mind that similar situations could be repeated in the future. It is observed that some of the existing standards responded to the required needs, while in other cases, it would seem appropriate to analyze their eventual modification. Among the first is Law No. 19480 of January 2017, which created a Registry of Persons obliged to pay alimony by the Social Security Bank, whose purpose was to ensure compliance with the pension service in favor of children and adolescents.

Based on the existence of the Registry created by said law, during the sanitary emergency in the Judicial Power Circular, 56/2020 was issued by which it was communicated that "precautionary, provisional or definitive maintenance pensions that served food obligations due to retention of their Salary will be deducted, when appropriate, from unemployment insurance that benefits the food debtor".<sup>9</sup>

In other words, the purpose of the rule could be fulfilled during the emergency to the extent that the Registry and the family judges' actions expedited the effective collection of alimony. Among the provisions that could be analyzed for eventual modification would refer to the order and number of family members required to serve food. In this regard, we must bear in mind that there is a duty of solidarity and family assistance provided in Article 45 of the CNA and that as the number of family members forced to serve food is expanded, the state could have more resources to care for the members most vulnerable in society who lack family.

#### **4. COVID-19 and Procedural Law**

The spread of the SARS-Cov-2 virus and the associated disease COVID-19, which since March 11, 2020, is classified by the WHO as a pandemic, determined the appearance of various responses from governments. In particular, in the case of the justice systems, the almost automatic response of almost all of them was the suspension of the judicial service and the procedural deadlines, with minimal attention to urgent cases.

In Uruguay, the Supreme Court of Justice and the Contentious Court declared an extraordinarily fair and the suspension of terms and scheduled actions, without prejudice to the possibility of enabling non-business days when the exercise of the Rights.<sup>10</sup> In broad lines, the spread of the virus and the disease and the measures initially adopted by the justice systems put the possible impact of general and basic procedural principles.

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<sup>8</sup> Decree No. 93/2020, March 13 2020.

<sup>9</sup> Resolution No. 8, March 16 2020.

<sup>10</sup> Decree No. 93/2020, March 13 2020.

On the one hand, the great difficulties to fully exercise the rights and the uncertainty about the situation of rights whose expiration or prescription periods could expire in the period of almost totally suspended activity generated a serious impact on legal security.<sup>11</sup> On the other hand, the almost total stoppage represented a significant impact on the universality of access to the process and effective judicial protection. This extraordinary state of affairs revealed something unthinkable in the current degree of evolution of the justice systems: that the effectiveness of constitutional promises could be seriously affected and that this affectation could be generalized.<sup>12</sup>

Additionally, the "stop" of the jurisdictional activity made it clear that even though ICTs offer us efficient instruments to improve service provision, the judicial systems had not taken advantage of these vast possibilities. This caused that in almost all systems, the judicial powers were launched almost "without a network" to use ICTs to carry out procedural activities. This has undoubtedly positive aspects - since, in a few weeks, tools that take years of development began to be applied - but another part faced the operators with important challenges so as not to affect other basic and very expensive principles to the process idea.

In the Uruguayan case, the Uruguayan Bar Association drew up two projects aimed at addressing some of these problems: one, aimed at regulating the "Extraordinary jurisdictional fair and suspension of deadlines," and the other, on "Use of information technologies and communication in jurisdictional processes".<sup>13</sup> Both projects took parliamentary status, but to date, only the one destined to regulate the extraordinary fair and the suspension of deadlines has been approved (law 19,879, of April 30, 2020). The one referred to the TIC regulation follows the parliament's study, in the Commission of Constitution, Codes, General Legislation and Administration of the House of Representatives. On the other hand, the Supreme Court of Justice and the Judicial Power regulated the exit of the fair, and the first one began to adopt some measures to advance in the implementation of ICT. Much remains to be done to standardize the systems at the regulatory, managerial, and operational levels. But there is also a lot to learn from the lessons that this extraordinary situation leaves us.

## 5. COVID-19 and Labor Law

The health emergency generated by COVID-19 caused immediate consequences in the normal development of work. Both from the Executive Power, through the Ministry of Labor, and directly by the social actors themselves, measures were adopted to adapt the work to the emergency.<sup>14</sup>

First, the pandemic precipitated telecommuting. Although this is not a new phenomenon in the labor market, the emergency determined that most of the companies decided that all those workers who, depending on the tasks in their charge, could do so, should start

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<sup>11</sup> Bryce, C., Ring, P., Ashby, S., & Wardman, J. K. (2020). Resilience in the face of uncertainty: early lessons from the COVID-19 pandemic. *Journal of Risk Research*, 23(7-8), 880-887.

<sup>12</sup> Section 1 of Resolution No. 43/20, June 3 2020.

<sup>13</sup> Decree No. 93/2020, March 13 2020.

<sup>14</sup> Resolution No. 12/2020, March 16 2020.

working from home. In this way, due to the force of the facts, a working modality was imposed that until now had been little developed, and of which many social actors had doubts about its viability.

The Executive Power contributed to its implementation by urging its implementation through Resolution 94/2020. The resolution mentioned above established that the employer must supply the necessary implements to carry out the task entrusted and that the teleworking must be communicated to the General Inspectorate of Labor and Social Security for its control.

The system was also enabled for companies covered by the Free Zones system, which as a rule are obliged to carry out their activity exclusively from the free territory. This implied a relaxation of work regulation in free zones that the administration had never allowed. Likewise, to contemplate the difficulty of providing work on the part of the companies, the Executive Power adopted decisions that all have one ultimate goal: maintaining work sources. Among them, we highlight the possibility of advancing licenses and changes in the unemployment insurance scheme.<sup>15</sup>

As is known, the license must be enjoyed the following year in which it is generated. However, by resolution of March 20, 2020, it was allowed that mediating an agreement between the worker and the employer can advance the enjoyment of the licenses that each employee will generate throughout 2020. On the other hand, the Executive Branch made the unemployment insurance regime more flexible, enabling partial unemployment insurance for monthly workers. A figure that until now only existed for day laborers. This new modality allows the worker to perform tasks a few days throughout the month and go on insurance for the rest of the month, receiving the respective subsidy.

Social security also encouraged solutions for the exceptional situation, providing that those over 65 years of age can remain temporarily in isolation, receiving sickness allowance during the period. The great novelty in this regard is that this protection does not require medical certification but is an option that is given to these people so that they individually decide if they want to use the benefit.<sup>16</sup>

As mentioned before, in the private sphere, the parties also reached agreements to contemplate the new labor reality. In this way, various roundabout agreements have been entered into, providing temporary salary and hour reductions or salary reduction agreements with partial dismissal payment. Also, in several companies, it was agreed to advance licenses from previous years that workers had scheduled later in the year. And special leave agreements without pay were reached. Along these lines, we can cite the agreement reached at the construction industry level, by which an extraordinary leave without pay was created from March 24 to April 5, with the payment of an extraordinary item.<sup>17</sup>

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<sup>15</sup> Resolutions No. 16 and 17, March 19 2020.

<sup>16</sup> Resolution No. 23/2020, April 2 2020.

<sup>17</sup> Resolution No. 29/2020, April 30 2020.

In short, the health emergency led to the generation of creative solutions from different areas (Executive Branch, social security, social actors) to adapt work to the need to "stay at home" and to reduce the negative impact that sick leave could immediately generate in the job market. It demonstrated workers' and employers' maturity to seek solutions to protect jobs in the greatest possible way.

## 6. COVID-19 and Financial Law

The pandemic caused by COVID-19 and the voluntary confinement measures generated a strong challenge for the economy in general and public finances. The fall in the national economy hit by the closure of shops and services brought a decrease in consumption, sales, household income, and the loss - at least temporarily - of jobs. Simultaneously, there was an inevitable fall in its tax and non-tax revenues from public companies for the state, which negatively shock public finances. On the contrary, the government's decision to protect the worst-hit sectors by making unemployment insurance more flexible, followed by creating palliative mechanisms for informal sectors, brought about the consequent increase in public spending. To all this, it is worth highlighting the clear response of the health authorities to maintain and increase coverage and the national health system. It is worth saying that the task of controlling the fiscal deficit - even more punished by the pandemic - posed by the incoming government was postponed, at least temporarily, by an increase in public spending, reasonable from our point of view, and a decrease consequent on public income generated by the fall in economic activity.<sup>18</sup>

Faced with the difficulty raised, the authorities decided -unlike other countries in the region- to be countercyclical. Therefore, they tried to keep "the engines of the economy running," appealing to some economic measures related to increased credit access to the private sector. In this sense, economic measures were approved to contribute to the economy's liquidity to preserve the payment chain. Special credit lines were established in Banco República, the guarantee fund of the National Development Agency (ANDE) was increased to grant credits for up to 2,500 million dollars. A direct line of credit program from ANDE was created with a rate subsidized by the Ministry of Economy and Finance.

On the other hand, authorization was approved for banks, financial services companies, and credit management companies with higher assets to extend the maturity terms of the credits -by up to 180 days- that said entities had granted to individuals or companies of the non-financial sector (families, sole proprietors, SMEs among others, mainly linked to the industrial and commercial sector). In the case of amortizable consumer loans, the payment of installments was authorized for several months. The authorization above was intended to address families' and companies' situation in the face of unexpected financial restrictions due to temporary loss of income resulting from the situation caused by the measures taken to prevent the spread of the coronavirus (COVID-19).

Besides, in tax matters, a postponement of the payment of taxes for small businessmen ("Literal E") was established, as well as a postponement in the payments of the quotas granted. For mon tax companies, sole proprietorships, and personal partnerships with up

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<sup>18</sup> Resolution No. 29/2020, April 30 2020.



to 10 employees under the industry and commerce contribution regime, employer contributions from owners and partners of personal partnerships were subsidized and financed to the Social Security Bank (BPS).

Notwithstanding this last fiscal measure, the biggest tax change, and perhaps the greatest sign of austerity issued by the Executive Power, was the initiative to create the COVID-19 Health Emergency Tax and an Additional Tax on Assistance of Social Security, finally approved by Law 19,874 of 4/8/2020.<sup>19</sup>

The COVID-19 Health Emergency Tax turns out to be a tax on the monthly income of natural persons, which taxes all salaries and nominal benefits, in cash or in-kind, derived from personal services provided to the State, Departmental Governments, Autonomous Entities, and Decentralized Services, non-state public law persons and state-owned entities in which the state or any public entity has majority participation, whatever the legal nature of the dependency relationship, corresponding to the income accrued corresponding to April and May 2020, excluding the supplementary annual salary from the tax and, if applicable, the vacation salary. It should be noted that the Executive Power was authorized to extend its application for up to a maximum period of two months, reporting to the General Assembly.

The tax turns out to be a progressive tax per class; that is to say that the taxed segment rate is applied to all income, resulting in proportional taxes. The nominal income taxed is from \$ 120,000, to which rates ranging from 5 to 20% would be applied. On the other hand, in the case of the remuneration of political positions, particular trust, and public officials who perform tasks abroad or represent the country in Binational Commissions, the income is fully taxed at 20%.

In turn, an additional tax was created to the Social Security Assistance Tax that taxes the income corresponding to retirements, pensions, and similar passivity benefits, served by public and private institutions resident in the Republic. Taxable income would be \$ 120,000 and upwards, to which rates of 5 to 20% would be applied. Therefore, the government's response to the pandemic was pragmatic and countercyclical, that is to say, to increase spending in a targeted manner while keeping the economy going. Also, it is needed to use the prudent management of public spending, followed by clear measures to protect the rule of law and respect for contracts, which will lead to an increase in investor confidence that will serve to exit more quickly than expected.<sup>20</sup>

## **7. COVID-19 and Commercial Law**

The world faces an unprecedented health crisis, with social and economic effects whose scope cannot yet be predicted. Economic problems impact and will continue to influence the legal field. The generalized impact of COVID-19 on various economic activities requires brief comments on its possible effects on acts, businesses, and legal relationships regulated by commercial law. Natural and legal persons who carry out commercial and/or business activity and all those who enter into commercial contracts

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<sup>19</sup> Law 19,879, April 30 2020.

<sup>20</sup> Resolution 33/20, May 14 2020.

or carry out acts regulated by commercial law, in one way or another, have been or will be affected by the negative effects caused by the pandemic. The drastic reduction of economic activities, the stoppage or reduction of production and/or commercialization and sales, generates a negative chain or domino effect that affects the fulfillment of the obligations assumed, destabilizes the economic-financial balance of companies, merchants, contracting or obligated, and in many cases will cause the insolvency of those. According to the current legal framework, and intrinsically related question is whether this can be considered a reason for "non-imputable strange cause" (force majeure or fortuitous event) and whether it constitutes a cause for justification of the breach, exonerating liability to the debtor. We can distinguish at least three situations: a) effects on contracts; b) effects on obligations derived from securities of monetary content; c) effects in bankruptcy matters.<sup>21</sup>

Regarding commercial contracts: it should be noted that the principle that legally concluded contracts are the law for the parties governs: article 209 of the Commercial Code; furthermore, that the majority of the doctrine and jurisprudence have rejected the doctrine of the revision of the contract due to excessive supervening onerosity. As mentioned earlier, articles 219 and 220 of the Code must also be considered.

According to article 219, the debtor must compensate the damages for the breach of it, except for strange causes that are not attributable to him. Article 220, for its part, establishes, "No damages are owed, when the debtor has not been able to give or do the thing to which he was obliged or has done what was forbidden, yielding to force majeure, or by fortuitous event ... "; Then, the article as mentioned earlier expressly excludes the cases that are not included in the said rule: "1. If any of the parties have taken upon themselves especially fortuitous cases or force majeure; 2. If the fortuitous event has been preceded by any fault of yours, without which the loss or non-execution would not have occurred; 3. If the debtor had fallen into default before the fortuitous event took place, this exception does not include the case in which the thing would have perished in the same way, in the hands of the creditor". The non-imputable extraneous cause is a liability waiver. Once the breach occurred, if it was caused by an external, unforeseeable, and irresistible fact, and said fact generated an impossibility of compliance for the obligor, said breach does not generate the debtor's responsibility.<sup>22</sup>

The pandemic can be considered a strange cause not attributable to the debtor, provided that it complies with the legal requirements to set up a liability waiver. The effects of COVID-19 cannot be considered "per se," a reason that justifies the breach of commercial contracts. Therefore, as long as the provision to which the debtor was obliged can be fulfilled, the obligor must comply without excuse himself in the existence of force majeure. If, on the other hand, the non-compliance is directly caused by the pandemic, and there is a causal link with the event that occurred, the non-compliance may not give rise to compensation for damages.

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<sup>21</sup> Section 11.1 of Resolution 33/20, May 14 2020.

<sup>22</sup> *Ibid.*

The pandemic may or may not be a cause of force majeure, having to analyze in each specific case the contract in question, what was agreed concerning the reasons of force majeure, and whether the obligation or obligations breached were breached as a direct consequence, of that cause. In short, COVID-19 does not alter the current regulations regarding compliance and non-compliance with contracts, but depending on the case, it may or may not configure a cause of force majeure exempting liability, in which case it must be accredited or proven by whom it invokes it, its configuration and causal link concerning the unfulfilled obligation, that is; which constitutes a circumstance that could not be foreseen or avoided, which makes it impossible to fulfill the obligation in question.

A situation of economic difficulties and crisis generated in many sectors of activity resulting from COVID-19 shows the considerable increase in defaults (definitive and due to delay) in the chain of payments. Likewise, the proliferation of securities raises the need to address the specific regulations that regulate vouchers, bills of exchange, and checks. In this area, the applicable regulations are found in article 108 of Decree-Law No. 14,701 and article 45 of Law 14,412, which list the exceptions that may be opposed in the executive exchange judgment. None of these norms foresees the reasons of force majeure or fortuitous event as possible exemptions of responsibility of the obligors or as a cause that prevents the executive judgment's progress.<sup>23</sup>

Regarding the insolvency field: the increase in insolvency proceedings, derived from the insolvency of natural or legal persons, merchants or not, is expected, affected by the general situation of reduction and slowing down of economic activities at the national, regional, and national levels. In this area, there are no specific regulations regarding causes of force majeure or acts of God. Therefore, once the insolvency occurs, following Law No. 18,387, the declaration of the bankruptcy proceeds. If the contest is produced as a direct consequence of COVID-19, that is, of the harmful economic effects generated by the new economic reality, and if, besides, absolute or relative presumptions of guilt are not configured, surely the contest will be classified as fortuitous.

The precedents are few comments on a complex and unprecedented problem, but the Uruguayan legal system's installation is unquestionable. Therefore, to reach adequate conclusions regarding the effects of COVID-19 in Commercial Law, individual analysis of each situation, contract, legal business, and commercial obligation at stake is required.

## **8. COVID-19 and Democracy**

The situation of seclusion and social distancing generated from the appearance of cases of COVID-19 carriers in Uruguay, as well as the legal measures strictly restricting freedom and exhortation adopted in this regard, for public health reasons, present different aspects that deserve attention from the point of view of the functioning of the democratic system. There are many impacts, questions, and even the possibilities that have been generated and, as if the level of complexity in health and society were not enough, it must be considered that the virus is also "contagious" for the economy.

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<sup>23</sup> Alconada Mon, H. (2020). *Coronavirus*. Martha Nussbaum: "Esta pandemia es una gran oportunidad para abrir nuestras vidas a las realidades de otros".

Under the vast axis traced, it is possible to consider not a few topics of interest. It is worth highlighting among them the new recourse to the state exhortation as a prescription in a broad sense, a reevaluation of public affairs and cooperation relations, a certain interest in the republican-style proposal for the establishment of a universal basic income, the treatment of emergencies under the Uruguayan Constitution and the relationship of the Powers in extraordinary scenarios.

Due to its necessary link with the concept of democracy, it is worth mentioning also some problems of delimitation and restriction of the rights of freedom, privacy, and the right to assembly, and the reaffirmation of the need to address new expressions or manifestations of their exercise, especially those of political participation in a broad sense, as a result of the availability of new technological tools.<sup>24</sup>

In another vein, on the one hand, the phenomenon has required the prompt solution of very specific legal issues, such as determining alternative mechanisms for the proper functioning of different public authorities or the postponement of departmental and municipal elections. On the other hand, eyes have also been directed to rethinking longer-term issues, such as the international public sphere of collective decisions, to address more legitimately and effectively problems - such as a global pandemic afflict humanity. In short, in a short editorial on such a fruitful subject, little can be done other than present some points as invitations for further developments. In any case, to conclude, it is important to note two additional observations and, based on them, respectively, indicate an opportunity and formulate a precaution.

The first observation consists of the remarkable haste in discussing issues on the agenda - under interpellations provoked by the innovations - but it was necessary to consider more intensely before thought. There is, therefore, an opportunity to use the momentum and explore new solutions to old problems - such as the distribution of wealth and access to citizenship in suitable material conditions - or to anticipate imminent or relatively new problems, such as the use of technologies in the provision of public services, possible job losses, the need for free and equal deliberation in the digital world, or the redesign of institutions that provide a moral and technically justified response to new confrontations that transcend borders - such as the resulting of epidemics or aggressions to the environment.

The second observation consists of the exaltation of some negative features in the institutional game emerging for a long time. Undoubtedly, the Executive Power presented itself as the protagonist in handling the emergency, but to such an extent that the other actors seem to have missed the scene.<sup>25</sup> At a certain point, it is reasonable to centralize decision-making in times of emergency to give prompt responses. But this by no means that the other Powers can disengage; rather the opposite, their intervention and control become even more relevant. Especially if one considers that the legal basis of administrative action is in the species Article 2 of Law No. 9,202 of 1934, a considerably old provision. This does not deserve legal reproaches, but it particularly exposes the

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<sup>24</sup> Información estadística actualizada a diario de la Johns Hopkins University (JHU)

<sup>25</sup> Arellano, J., Cora, L., García, C. y Sucunza, M. (2020). Estado de la Justicia en América Latina bajo el COVID-19

absence of a current political appreciation on the Legislative Power and weak cooperation between Powers.

Above all, it remains to finish presenting the announced precaution. To a certain imbalance in the constitutional design for the benefit of the Executive Power and the President of the Republic, a greater depth from political practice has long been added. Care must be taken that circumstantial exaltation is not consolidated into a deepening of power imbalances, always enemies of freedom.

## 9. COVID-19 and Judicial System

The pandemic declared by the World Health Organization (WHO) on March 11, 2020, as a result of the action of COVID-19, has caused a real commotion at the global level. Uruguay has not been oblivious to the consequences and high costs that it entails in various areas, to alterations to the state's functioning.<sup>26</sup>

Our country's state justice service had to adjust its activity, making it compatible with its officials and service providers' health security. In the scope of their respective competencies, both the Supreme Court of Justice and the Administrative Litigation Tribunal arranged a sanitary judicial fair that concluded on May 15, 2020, without actually paralyzing the service, keeping it under a special judicial fair regime. The Supreme Court of Justice by Resolution No. 33/2020 had arranged a series of measures to resume the activity of different types, and the beginning of a pilot plant for the holding of hearings by videoconference in the terms provided in art. 11 of said resolution using the help of technology, an aspect that before COVID-19 was already envisioned in our legislation (Law 18,237) and the regulations (Agreed 7405, 7637, 7644 and 7648).<sup>27</sup>

## 10. Conclusion

Beyond a negative first impression, it is necessary to change the vision of the phenomenon facing it as an opportunity, using the time we stay home to reflect in that direction. From this, we extract the observation that all events, especially those that affect rights, have been extraordinarily shortened and the changes. This shock received forces us to go even beyond the circumstantial measures adopted to face the activity derived from the service demands' requirements. It shows us that, given the new reality of today's world, a virus (the event may be of another type) did not take more than three weeks to transcend, a little more than two months to be declared a "pandemic," as judicial measures to Facing it in the protection of fundamental rights of the person, in no way adjusts to the events that beset us. This questions us about how tight and reasonable our procedural system is. How adequate are the justice system's functioning and the processes aimed at protecting fundamental rights threatened by this nature or others' events, requiring more effective intervention forms? We can ask ourselves to what extent structurally the channels or tools to be used carry within themselves the germ of

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<sup>26</sup> "Procesos jurisdiccionales. Utilización de tecnologías de la información y comunicación", C/138/20. Rep. 41.

<sup>27</sup> Resolution No. 12, Resolution No. 16 and Resolution 17, March 19 2020.

"ineffectiveness" to protect rights. This is a great opportunity to undertake an activity to diagnose and project changes to the system in everything that improves rights and guarantees. For this, and in parallel with what has been done by the national government in the fight against COVID-19, it is necessary to involve the main referents of the science of law and academia related to the subject, the organs of the system, the operators of the law and the organizations that bring them together, to work on a project to adapt the justice system and its adequate legislation to the realities of the 21st century.

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