

Excerpt

Opinion of the Ministry of the Interior

to assess the running of time limits in the area of public administration during the duration of the emergency (declared by Government Resolution No. 194 of 12 March 2020, in accordance with Articles 5 and 6 of Constitutional Act No. 110/1998 Coll., on the Security of the Czech Republic, for the territory of the Czech Republic due to health threat in connection with coronavirus)

The Administrative Procedure Code, as a general procedural regulation for the exercise of powers of administrative authorities in the area of public administration, does not directly address the issue of running procedural deadlines at the time of the declared state of emergency. The emergency situation is accompanied by a number of measures restricting the movement of persons for health reasons and the activities of a number of institutions, which make it difficult or impossible to comply with the statutory deadlines. For these reasons, the Ministry of the Interior recommends that administrative authorities proceed as follows when assessing the course of time limits:

For time limits stipulated by law or on the basis of an act, the duration of an emergency situation may in many cases be a reason for excusing a missed act (Section 41 of the Code of Administrative Procedure). Emergency situations, or crisis measures ordered in connection with emergency situations, which may limit the possibility of taking action within the required time limit due to restricted movement of persons, are of a serious nature, which occurred without fault of the party pursuant to § 41 para.4 of the Code of Administrative Procedure.

However, even in this situation, the administration must carry out an individual case assessment. Excusing a missed action will always be appropriate in cases where the action requires personal participation, and by attending the administration would expose himself and others to an increased risk of infection. The reason for excusing a missed act can usually also be the difficulty of making a submission by post. In such cases, an emergency can generally be assessed as a serious reason without the need for more detailed evidence.

On the other hand, in cases where the party to the proceedings has a data box and the act (eg appeal) could have been done within the prescribed period, the declaration of an emergency situation will not be a reason to excuse the missed act without further reason. In such cases, it is therefore for the party to duly substantiate its request.

Section 41 (2) of the Administrative Procedure Code stipulates that the participant may apply for excusing failure to act within 15 days of the day on which the obstacle preventing the submitter from taking the act has passed. A missed act must be associated with the request, otherwise the administrative authority does not deal with it.

After the end of the emergency period, the period of 15 days for requesting excusing the participant's failure to act, to which the missed act must be associated, will run.

The administrative authority decides on excusing failure to act by a resolution which contains only a brief justification referring to the declaration of an emergency which prevented the party to the proceedings from carrying out the act. The administrative authority may, by a single resolution, excuse more than one failure to act in the same procedure. All parties to the proceedings who are entitled to appeal against the resolution will be notified.

Failure to act cannot be excused if it is expressly excluded by the law. Furthermore, the administrative authority shall not excuse the missed act if it is evident that the damage that would be caused by affecting the rights acquired in good faith or by the public interest exceeds the threat to the submitter (Section 41 (5) of the Code of Administrative Procedure).

The above does not apply to peremptory/strict deadlines or deadlines with which the law links a certain consequence (eg fiction of decisions, etc.). In these cases, it depends on the specific law whether it provides for any exceptions justifying an extension of the deadline that could be applied to actions taken during the duration of the emergency.

*Prepared by the Legislation and Coordination Department of the Ministry of the Interior
Prague 19 March 2020*